

a research memo for city officials

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**A MODEL CHARTER**

for Minnesota Cities

Supplement

**COMMENTS**

on the Model Charter

League of Minnesota Cities



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## Preface

In 1922 a model charter for Minnesota cities was prepared by Professor William Anderson of the University of Minnesota Political Science Department and included as Appendix 1 of his *City Charter Making in Minnesota*, now out of print. In the next 34 years before the charter was revised, a score of cities in the state adopted charters using this model charter as a guide, and many of its essential features were incorporated in the optional council-manager plan provisions of the 1949 village code (Minn. Stats. Ch. 412, now a code for all non-home rule charter cities).

With the passing years it became increasingly apparent that, despite its basic soundness, the Anderson model charter needed revision in the light of experience and statutory developments. The first revision of the charter was made in 1956 by the League staff. Like the 1956 revision, the 1974 revision retains the basic provisions of the original, but some alternative suggestions on form of government and methods of election have been made available in an accompanying memorandum of comments, where questions that charter commissions should consider in using the model charter as a guide are raised and pertinent statutes and points of policy noted.

Suggestions and criticisms of charter commissions and city officials in the use of the revised model charter and comments are solicited so that future revisions may increasingly meet the needs of Minnesota cities. The model charter should be used with two other revised excerpts from the 1922 Anderson monograph: *Principles and Problems of Charter Making* and *Home Rule Charter Commission Procedure*. These and other charter memoranda are listed in Appendix D.

**CHAPTER 1**  
**NAME, BOUNDARIES, POWERS,**  
**AND GENERAL PROVISIONS**

**Section 1.01. Name and boundaries.** The City of \_\_\_\_\_ County, Minnesota shall continue to be a municipal corporation under that name and with the same boundaries as now are or hereafter may be established.

**Sec. 1.02. Powers of the City.** The city shall have all powers which it may now or hereafter be possible for a municipal corporation in this state to exercise in harmony with the constitutions of this state and of the United States. It is the intention of this charter to confer upon the city every power which it would have if it were specifically mentioned. The charter shall be construed liberally in favor of the city and the specific mention of particular municipal powers in other sections of this charter does not limit the powers of the city to those thus mentioned. Unless granted to some other officer or body, all powers are vested in the city council.

**CHAPTER 2**  
**FORM OF GOVERNMENT**

**Sec. 2.01. Form of Government.** The form of government established by this charter is the "Council-Manager Plan." Except as otherwise provided by law or this charter, all powers of the city are vested in the council. The city manager shall be the head of the administrative branch of the city government and shall be responsible to the council for the proper administration of all city affairs.

**Sec. 2.02. Boards and commissions.** There shall

be no separate administrative board of health, library board, or any other administrative board or commission except for the administration of a function jointly with another political subdivision. The council shall itself be and perform the duties and exercise the powers of such boards and commissions provided for by statute. The council may, however, establish boards or commissions to advise the council with respect to any municipal function or activity, to investigate any subject of interest to the city, or to perform quasi-judicial functions.

**Sec. 2.03. Council composition and election.** The council shall be composed of a mayor and six councilmen who shall be qualified electors and who shall be elected at large. Each councilman shall serve for a term of four years and until his successor is elected and qualifies, except that at the first election held after the adoption of this charter the three candidates having the highest number of votes shall serve for four years and the other three successful candidates shall serve for two years. The mayor shall serve for a term of four years and until his successor is elected and qualifies.

**Sec. 2.04. Incompatible offices.** No member of the council shall be appointed city manager, nor shall any member hold any paid municipal office or employment under the city; and until one year after the expiration of his term as mayor or councilman no former member shall be appointed to any paid appointive office or employment under the city which was created or the compensation for which was increased during his term as councilman.

**Sec. 2.05. Vacancies.** An elective office be-

comes vacant when the person elected or appointed thereto dies before taking office or fails to qualify, or the incumbent dies, resigns in writing filed with the city clerk, is convicted of a felony, ceases to reside in the city, or is adjudged incompetent by a court of competent jurisdiction. In each such case the council shall by resolution declare the vacancy to exist and shall forthwith appoint an eligible person to fill the vacancy for the remainder of the unexpired term.

**Sec. 2.06. The mayor.** The mayor shall preside at meetings of the council and shall have a vote as a member. The council shall choose from its members a president pro tem who shall hold office at the pleasure of the council. He shall serve as president in the mayor's absence and as mayor in case of the mayor's disability or absence from the city. The mayor shall be recognized as head of the city government for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for purposes of martial law, but he shall have no administrative duties.

**Sec. 2.07. Salaries.** The mayor and councilmen shall receive such compensation as is fixed by the council in accordance with law. The city manager and all subordinate officers and employees of the city shall receive such salaries or wages as may be fixed by the council.

**Sec. 2.08. Investigation of city affairs.** The council may make investigations into the affairs of the city and the conduct of any city department, office or agency and for this purpose may subpoena witnesses administer oaths, take testimony, and require the production of evidence. The council shall provide for an audit of the

city's accounts at least once a year by the state department in charge of such work or by a public accountant. At any time the council may provide for an examination or audit of the accounts of any city officer or agency and it may provide for any survey or research study of any subject of municipal concern.

**Sec. 2.09. Interferences with administration.** Neither the council nor any of its members shall dictate the appointment or removal of any city administrative officer or employee, but the council may express its views and freely discuss with the manager anything pertaining to appointment and removal of officers and employees. Except for the purpose of inquiry and investigation under Section 2.08, the council and its members shall deal with and control city administrative officers and employees under the jurisdiction of the manager solely through the manager, and neither the council nor any council member shall give orders to any subordinate of the manager either publicly or privately.

## **CHAPTER 3**

### **COUNCIL PROCEDURE**

**Sec. 3.01. Council meetings.** The council shall meet regularly at least once each month at such times and places as the council may designate by rule. The mayor or any three members of the council may call special meetings of the council upon at least twelve hours notice to each member and such reasonable public notice as may be prescribed by council rule in compliance with the laws of Minnesota. To the extent provided by law, all meetings of the council and its committees shall be public and any citizen shall have access to the minutes and records of the council at all

reasonable times.

**Sec. 3.02. Secretary of council.** The city clerk shall act as secretary of the council. He shall keep a journal of council proceedings and perform such other duties as this charter or the council may require. The council may designate any other city official or employee except the city manager or a member of the council to act as secretary of the council.

**Sec. 3.03. Rules of procedure and quorum.** The council shall determine its own rules and order of business. A majority of all members shall constitute a quorum but a smaller number may adjourn from time to time. The council may by rule provide a means by which a minority may compel the attendance of absent members.

**Sec. 3.04. Ordinances resolutions, and motions.** Except as otherwise provided in this charter, all legislation shall be by ordinance. The votes of council members on any action taken shall be recorded in accordance with statute. Except as otherwise provided in this charter, an affirmative vote of a majority of all the members of the council shall be required for the adoption of all ordinances and resolutions.

**Sec. 3.05. Procedure on ordinances.** Every proposed ordinance shall be presented in writing. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be, "The City of \_\_\_\_\_ ordains." No ordinance except an emergency ordinance shall be adopted at the meeting at which it is introduced and at least three days shall elapse between its introduction and final passage.

**Sec. 3.06. Emergency ordinances.** An emergency ordinance is an ordinance necessary for the immediate preservation of the public peace, health, morals, safety or welfare in which the emergency is defined and declared in a preamble and the ordinance is adopted by a vote of at least five members of the council.

**Sec. 3.07. Procedure on resolutions.** Every resolution shall be presented in writing and read in full before adoption, unless the reading is dispensed with by unanimous consent.

**Sec. 3.08. Signing and publication of ordinances and resolutions.** Every ordinance or resolution passed by the council shall be signed by the mayor, attested by the city clerk, and filed and preserved by him. Every ordinance shall be published at least once in the official newspaper. To the extent and in the manner provided by law an ordinance may incorporate by reference a statute, state administrative rule or regulation of Minnesota, a code, or ordinance or part thereof without publishing the material referred to in full.

**Sec. 3.09. When ordinances and resolutions take effect.** Every resolution and emergency ordinance shall take effect immediately upon its passage or at such later date as it specifies. Every other ordinance shall take effect 30 days after publication or at such later date as it specifies. Every ordinance and resolution adopted by the voters of the city shall take effect immediately upon its adoption or at such later date as it specifies.

**Sec. 3.10. Amendment and repeal of ordinances and resolutions.** Every ordinance or resolution repealing all or part of a previous ordinance or resolution shall give the number, if any, and the

title of the ordinance or resolution to be repealed in whole or in part. No ordinance or resolution shall be amended by reference to the title alone, but such an amending ordinance or resolution shall set forth in full each section or subdivision to be amended and shall indicate by appropriate type or symbols matter to be omitted or added.

Sec. 3.11. Revision and codification of ordinances. The city may revise, rearrange, and codify its ordinances with such additions and deletions as may be deemed necessary. The ordinance code may be published in book, pamphlet, or continuously revised loose-leaf form and copies shall be made available by the council at the office of the city clerk for general distribution to the public free or for a reasonable charge. Publication in such a code shall be a sufficient publication of any ordinance provision not previously published if a notice that copies of the codification are available at the office of the city clerk is published in the official newspaper for at least two successive weeks.

## CHAPTER 4

### NOMINATIONS AND ELECTIONS

Sec. 4.01. The regular municipal election. A regular municipal election shall be held on the first Tuesday after the first Monday in November of each odd-numbered year commencing in 19\_\_\_\_ at such place or places as the city council may designate. The city clerk shall give at least two weeks published notice of the time and place of holding such election and of the officers to be elected, but failure to give such notice shall not invalidate the election.

Sec. 4.02. Special elections. The council may

by resolution order a special election and provide all means for holding it. The clerk shall give at least two weeks published notice of a special election. The procedure at such election shall conform as nearly as possible to that prescribed for other city elections.

Sec. 4.03. Filing for office. No earlier than \_\_\_\_days or later than \_\_\_\_days before the municipal election, any voter of the city qualified under the state constitution for elective office may, by filing an affidavit and paying a filing fee of \$ \_\_\_\_ to the city clerk, have his name placed on the municipal primary ballot or, if there is no primary election, on the municipal election ballot.

Sec. 4.04. Procedure at elections. Subject to this charter and applicable state laws, the council may by ordinance further regulate the conduct of municipal elections. Except as otherwise provided by this charter and supplementary ordinances, general state laws on elections shall apply to municipal elections.

## CHAPTER 5

### INITIATIVE AND REFERENDUM

Sec. 5.01. General voter authority. The voters of the city shall have the right, in accordance with this charter, to propose ordinances and to require ordinances to be submitted to a vote by processes known respectively as the initiative and referendum.

Sec. 5.02. Petitions. An initiative or referendum shall be initiated by a petition signed by registered voters of the city equal in number to 20 percent of those who voted for mayor in the last preceding city election. Each petition shall be sponsored



by a committee of five voters whose names and addresses shall appear on the petition. A petition may consist of one or more papers, but each paper circulated separately shall contain at its head or attached to it the statement required by Section 5.05 or 5.06, as the case may be. Each signer shall sign his name and give his street address. Each separate page of the petition shall have appended to it a certificate, verified by oath, that each signature is the genuine signature of the person whose name it purports to be. The person making the certificate shall be a resident of the city. Any person whose name appears on a petition may withdraw his name by a statement in writing filed with the city clerk before the clerk advises the council of the sufficiency of the petition.

Sec. 5.03. Determination of sufficiency. Immediately upon receipt of the petition, the city clerk shall examine the petition as to its sufficiency and report to the council within 20 days. Upon receiving the report, the council shall determine by resolution the sufficiency of the petition.

Sec. 5.04. Disposition of insufficient petition. If the council determines that the petition is insufficient or irregular, the city clerk shall deliver a copy of the petition, together with a written statement of its defects, to the sponsoring committee. The committee shall have 30 days in which to file additional signature papers and to correct the petition in all other particulars. If at the end of that period the council finds that the petition is still insufficient or irregular, the city clerk shall file the petition in his office and notify the sponsoring committee. The final finding that the petition is insufficient or irregular shall not prejudice the filing of a new petition for the same purpose nor shall it prevent the council from referring the

ordinance to the voters at the next regular or special election at its option.

Sec. 5.05. Initiative. Any ordinance, except an ordinance relating to the budget or capital program, the appropriation of money, the levy of taxes, or the salaries of city officers or employees, may be proposed by a petition which shall state at the head of each page or attached thereto the exact text of the proposed ordinance. If the council passes the proposed ordinance with amendments and a majority of the sponsoring committee do not disapprove the amended form by a statement filed with the city clerk within 10 days of its passage by the council, the ordinance need not be submitted to the voters. If the council fails to enact the ordinance in an acceptable form within 60 days after the final determination of sufficiency of the petition, the ordinance shall be placed on the ballot at the next election occurring in the city. If no election is to occur within 120 days after the filing of the petition, the council shall call a special election on the ordinance to be held within such period. If a majority of those voting on the ordinance vote in its favor, it shall become effective 30 days after adoption unless the ordinance specifies a later effective date.

Sec. 5.06. Referendum. Any ordinance subject to the initiative may be subjected to referendum by a petition which shall state, at the head of each page or on an attached paper, a description of the ordinance. Any ordinance upon which a petition is filed, other than an emergency ordinance, shall be suspended in its operation as soon as the petition is found sufficient. If the ordinance is not thereafter entirely repealed, it shall be placed on the ballot at the next election or at a special election called for that purpose, as the council

determines. If a majority of the voters voting thereon favors the ordinance, it shall go into effect immediately or on the date specified in the ordinance; if a majority of the electors voting thereon votes against the ordinance, it shall be considered repealed upon certification of the election results. If a petition is filed against an emergency ordinance, the ordinance shall remain in effect but shall be repealed if a majority of the voters voting on the ordinance vote against it.

## CHAPTER 6

### ADMINISTRATION OF CITY AFFAIRS

Sec. 6.01. The city manager. The city manager shall be the chief administrative officer of the city. He shall be chosen by the council solely on the basis of his training, experience, executive and administrative qualifications. He need not be a resident of the city at the time of his appointment but may reside outside the city while in office only with the approval of the council. The city manager shall be appointed for an indefinite term and may be removed at any time by an affirmative vote of a majority of the council; but after he has served as manager for one year, he may demand written charges and a public hearing on the charges before the council prior to the date when his final removal takes effect. After the hearing, if one is demanded, the council shall have unlimited discretion either to reinstate the manager or make his removal final. Pending the hearing and removal, the council may suspend the manager from office. With the approval of the council, the manager may designate some properly qualified person to perform the duties of the manager during his absence or disability or while the office is vacant.

Sec. 6.02. Powers and Duties of the City Man-

ager. Subdivision 1. The city manager shall be responsible to the council for the administration of the city's affairs. He shall have the powers and duties set forth in the following subdivisions:

Subd. 2. He shall see that this charter and the laws, ordinances, and resolutions of the city are enforced.

Subd. 3. He shall appoint and may suspend and remove, upon the basis of merit and fitness and subject to applicable personnel rules, the city clerk, all heads of departments and all subordinate officers and employees.

Subd. 4. He shall direct and supervise all departments, offices, and agencies of the city, except as otherwise provided by law or charter.

Subd. 5. He shall attend all meetings of the council and may take part in discussion but not vote; but the council may, in its discretion, exclude him from any meeting at which his removal is considered.

Subd. 6. He shall recommend to the council for adoption such measures as he deems necessary for the welfare of the people and the efficient administration of the city's affairs.

Subd. 7. He shall keep the council fully advised on the financial condition and needs of the city, and he shall prepare and submit to the council the annual budget and capital program.

Subd. 8. He shall submit to the council and make available to the public a complete report on the finances and administrative activities of the city at the end of each fiscal year.

Subd. 9. He shall perform such other duties as are prescribed by charter or may be required by the council.

Sec. 6.03. Administrative organization. The council may by ordinance establish city departments, offices, and agencies and prescribe their functions. No power or duty conferred by this

charter upon a particular office or agency shall be transferred to any other.

Sec. 6.04. Subordinate officers. There shall be a city clerk and such other officers subordinate to the city manager as the council may establish by ordinance. The city clerk shall be subject to the direction of the city manager and shall have such duties in connection with the keeping of the public records, the custody and disbursement of the public funds, and the general administration of the city's affairs as the council may prescribe. He may be designated to act as secretary of the council and also as treasurer. The council may by ordinance abolish offices which have been created by ordinance and it may combine the duties of various offices as it may see fit.

Sec. 6.05. Purchases and contracts. The city manager shall be the chief purchasing agent of the city. All city purchases and contracts shall be made or let by the city manager when the amount involved does not exceed \$\_\_\_\_. All other purchases shall be made and all other contracts let by the council after the recommendation of the city manager has first been obtained. Contracts shall be made in compliance with the uniform contracting law, and whenever competitive bids are required, the contract shall be let to the lowest responsible bidder. All contracts, bonds, and instruments of any kind to which the city is a party shall be signed by the mayor and the city manager on behalf of the city and shall be executed in the name of the city. The council may by ordinance adopt further regulations for the making of bids and the letting of contracts.

## CHAPTER 7

### TAXATION AND FINANCES

Sec. 7.01. Council to control finances. The council shall have full authority over the financial affairs of the city. It shall provide for the collection of all revenues and other assets, the auditing and settlement of accounts, and the safekeeping and disbursement of public moneys.

Sec. 7.02. Fiscal year. The fiscal year of the city shall be the calendar year.

Sec. 7.03. System of taxation. Subject to the state constitution, and except as forbidden by it or by state law, the council shall have full power to provide by ordinance for a system of local taxation. This authority includes the power by ordinance to assess, levy, and collect taxes on all subjects or objects of taxation except as limited or prohibited by the state constitution, by this charter or by laws imposing restrictions upon the city irrespective of charter provisions.

Sec. 7.04. Submission of budget. Annually the city manager shall submit to the council his recommended budget in accordance with a budget calendar to be established by ordinance or, in the absence of ordinance, by September 1.

The budget shall provide a complete financial plan for all city funds and activities for the ensuing fiscal year and, except as required by law or charter, shall be in such form as the manager deems desirable or the council may require. It shall include a summary and show in detail all estimated income and all proposed expenditures, including debt service and comparative figures for the current fiscal year, actual and estimated, and the preceding fiscal year. In addition to showing proposed expenditures for current operations, it shall show proposed capital expenditures to be made during

the year and the proposed method of financing each such capital expenditure. For each utility operated by the city, the budget shall show anticipated net surplus or deficit and the proposed method of its disposition; and subsidiary budgets for each such utility giving income and expenditure information shall be included or attached as appendices. The total proposed operating budget to be provided from the property tax shall not exceed the amounts authorized by law and this charter. Consistent with these provisions, the budget shall contain such information and be in the form prescribed by ordinance and by law.

Sec. 7.05. Capital improvement program. The manager shall prepare and submit to the council a recommended five-year capital improvement program no later than June 1 each year. The capital improvement program shall include a list of all capital improvements proposed to be undertaken during the next five fiscal years, with appropriate supporting information as to the necessity for such improvements; cost estimates, method of financing and recommended time schedules for each such improvement; and the estimated annual cost of operating and maintaining the facilities to be constructed or acquired. This information shall be revised and extended each year for capital improvements still pending or in process. The council shall hold a public hearing on the capital improvement program and adopt it with or without amendment no later than August 15.

Sec. 7.06. Council action on budget. The budget shall be considered at the first regular monthly meeting of the council in September and at subsequent meetings until a budget is adopted for the ensuing year. The meetings shall be so con-

ducted as to give interested citizens a reasonable opportunity to be heard. The council may revise the proposed budget but no amendment to the budget shall increase the authorized expenditures to an amount greater than the estimated income. The council shall adopt the budget not later than the first week of October by a resolution which shall set forth the total for each budgeted fund and each department with such segregation as to objects and purposes of expenditures as the council deems necessary for purposes of budget control. The council shall also adopt a resolution levying the amount of taxes provided in the budget and the clerk shall certify the tax resolution to the county auditor in accordance with law not later than October 10. Adoption of the budget resolution shall constitute appropriations at the beginning of the fiscal year of the sums fixed in the resolution for the several purposes named.

Sec. 7.07. Enforcement of the budget. The city manager shall enforce strictly the provisions of the budget. He shall not authorize any payment or the incurring of any obligation by the city unless an appropriation has been made in the budget resolution and there is a sufficient unexpended balance left after deducting the total past expenditures and encumbrances against the appropriation. No officer or employee of the city shall place any order or make any purchase except for a purpose and to the amount authorized in the budget resolution. Any obligation incurred by any person in the employ of the city for any purpose not authorized in the budget resolution or for any amount in excess of the amount authorized shall be a personal obligation upon the person incurring the obligation. No check shall be issued or transfer made to any account other

than one owned by the city until the claim to which it relates has been supported by an itemized bill, payroll, or time-sheet or other document approved and signed by the responsible city officer who vouches for its correctness and reasonableness.

Sec. 7.08. Alterations in the budget. After the budget resolution has been adopted, the council shall not increase the amounts fixed in the resolution beyond the estimated receipts except to the extent that actual receipts exceed the estimate. At any time the council may, by resolution approved by a majority of its members, reduce the sums appropriated for any purpose by the budget resolution or authorize the transfer of sums from unencumbered balances of appropriations in the budget resolution to other purposes.

Sec. 7.09. Funds. There shall be maintained in the city treasury a general fund and such other funds as may be required by statute, ordinance, or resolution. The council may, by ordinance or resolution, make inter-fund loans, except from trust and agency funds, as it may deem necessary and appropriate.

Sec. 7.10. City indebtedness. Except as provided in Sections 7.11 and 7.12, no obligations shall be issued to pay current expenses, but the council may issue and sell obligations for any other municipal purpose in accordance with law and within the limitations prescribed by law. Except in the case of obligations for which an election is not required by this charter or by law, no such obligations shall be issued and sold without the approval of the majority of the voters voting on the question at a general or special election.

Sec. 7.11. Anticipation certificates. At any time after January 1 the council may issue certificates of indebtedness in anticipation of state and federal aids and the collection of taxes levied the previous year for any fund and not yet collected. The total amount of certificates issued against any fund for any year together with interest thereon until maturity shall not exceed the total of state and federal aids and current taxes due to the fund and uncollected at the time of issuance. Such certificates shall be issued on such terms and conditions as the council may determine, but they shall become due not later than April 1 of the year following their issuance. The proceeds of the tax levied and such state or federal aids as the governing body may have allocated for the fund against which tax anticipation certificates are issued and the full faith and credit of the city shall be irrevocably pledged for the redemption of the certificates.

Sec. 7.12. Emergency debt certificates. If in any year the receipts from taxes or other sources should from some unforeseen cause become insufficient for the ordinary expenses of the city, or if any calamity or other public emergency necessitates the making of extraordinary expenditures, the council may by ordinance issue on such terms and in such manner as the council determines emergency debt certificates to run not to exceed three years. A tax sufficient to pay principal and interest on such certificates with the margin required by law shall be levied as required by law. The ordinance authorizing an issue of such emergency debt certificate shall state the nature of the emergency and be approved by at least five members of the council. It may be passed as an emergency ordinance.

**CHAPTER 8**  
**PUBLIC IMPROVEMENTS AND SPECIAL**  
**ASSESSMENTS**

Sec. 8.01. Power to make improvements and levy assessments. The city may make any type of public improvement not forbidden by law and levy special assessments to pay all or any part of the cost of such improvements as are of a local character. The total assessments for any local improvement may not exceed the cost of the improvement, including all costs and expenses connected therewith, with interest. No assessment shall exceed the benefits to the property.

Sec. 8.02. Assessments for services. The council may provide by ordinance that the cost of city services to streets, sidewalks, or other public or private property may be assessed against property benefited and collected in the same manner as special assessments.

Sec. 8.03. Local improvement procedure. When the city undertakes any local improvement to which the state local improvement code applies, it shall comply with the provisions of that law. The council may by ordinance prescribe the procedure to be followed in making any other local improvement and levying assessments therefor.

**CHAPTER 9**  
**EMINENT DOMAIN**

Sec. 9.01. Acquisition of property. The city may acquire, by purchase, gift, condemnation, or otherwise, any property, either within or without its boundaries, that may be needed by the city for any public purpose. In acquiring property by exercising the power of eminent domain, the

city shall proceed according to Minnesota Statutes, Chapter 117 or other applicable law.

**CHAPTER 10**  
**FRANCHISES**

Sec. 10.01. Franchises required. Except as otherwise provided by law, no person, firm, or corporation shall place or maintain any permanent or semi-permanent fixtures in, over, upon, or under any street or public place for the purpose of operating a public utility or for any other purpose, without a franchise therefor from the city. A franchise shall be granted only by ordinance, which shall not be an emergency ordinance. Every ordinance granting a franchise shall contain all the terms and conditions of the franchise. The grantee shall bear the costs of publication of the franchise ordinance and shall make a sufficient deposit with the clerk to guarantee publication before the ordinance is passed.

Sec. 10.02. Term. No exclusive or perpetual franchise shall ever be granted. No franchise for a term exceeding twenty years shall be effective until approved by a majority of the electors voting thereon.

Sec. 10.03. Public hearing. Before any franchise ordinance is adopted or any rates, fares, or prices to be charged by a public utility are fixed by the council, the council shall hold a public hearing on the matter. Notice of such hearing shall be published at least once in the official newspaper not less than ten days prior to the date of the hearing.

Sec. 10.04. Power of regulation reserved. Subject to any applicable law the council may by ordinance reasonably regulate and control the

exercise of any franchise, including the maximum rates, fares, or prices to be charged by the grantee. No franchise value shall be included in the valuation of the grantee's property in regulating utility rates, fares, or prices under any applicable law, ordinance, or regulation or in proceedings for municipal acquisition of the grantee's property by purchase or eminent domain.

Sec. 10.05. Renewals or extensions. Every renewal or modification of a franchise, including an existing franchise, shall be subject to the same limitations and shall be granted in the same manner as a new franchise.

## **CHAPTER 11**

### **PUBLIC OWNERSHIP AND OPERATION OF UTILITIES**

Sec. 11.01. Acquisition and operation utilities. The city may own and operate any water, gas, light, power, heat, telephone, transportation or other public utility for supplying its own needs for utility service or for supplying utility service to private consumers or other governmental agencies. It may construct all facilities reasonably needed for that purpose and may acquire any existing utility properties so needed. The city shall not acquire or construct any public utility unless the proposition to acquire or to construct it has been incorporated in an ordinance and adopted by the council. Such ordinance shall not be an emergency ordinance.

Sec. 11.02. Regulations and rates. The council may by ordinance fix rates, fares, and prices for any municipal utility, prescribe the time and manner of payment for any such service, make such other regulations as may be necessary, and pre-

scribe penalties for violation of such regulations.

Sec. 11.03. Lease of plant. The council may by ordinance contract with any person, firm, or corporation for the operation of any municipal utility for a term not to exceed ten years. Such ordinance shall not be an emergency ordinance.

Sec. 11.04. Sale of public utility. No public utility owned by the city shall be sold or otherwise disposed of by the city unless the full terms of the proposition of sale or other disposition are embodied in an ordinance approved by a majority of the voters voting thereon at a general or special election. Any sale, lease or abandonment of a water works or light plant shall be subject, in addition, to the requirements of state law.

## **CHAPTER 12**

### **GENERAL PROVISIONS**

Sec. 12.01. Official publication. The council shall annually at its first meeting of the year designate a legal newspaper of general circulation in the city as its official newspaper in which shall be published ordinances and other matters required by law to be so published as well as such other matters as the council may deem it in the public interest to have published in this manner.

Sec. 12.02. Oath of office. Every elected or appointed officer of the city shall, before entering upon the duties of his office, take and subscribe an oath of office in substantially the following form; "I do solemnly swear (or affirm) to support the constitution of the United States and of this state and to discharge faithfully the duties devolving upon me as . . . (title of office) of the city of \_\_\_\_\_ to the best of my judgment and ability."

**Sec. 12.03. Official bonds.** The city manager, the city clerk, the city treasurer, and such other officers or employees of the city as may be specified by ordinance shall each, before entering upon the duties of his respective office or employment, give a corporate surety bond to the city as security for the faithful performance of his official duties and the safekeeping of the public funds. Such bonds shall be in such form and amount as the council determines and may be either individual or blanket bonds in the discretion of the council. They shall be approved by the city council and filed with the city clerk. The provisions of state laws relating to official bonds not inconsistent with this charter shall be complied with. The premiums on such bonds shall be paid by the city.

**Sec. 12.04. Official interest in contracts.** Except as otherwise permitted by law, no officer of the city who is authorized to take part in any manner in any contract with the city shall voluntarily have a personal financial interest in or personally benefit from such contract.

**Sec. 12.05. Sale of real property.** No real property of the city shall be disposed of except by ordinance. The net cash proceeds of any sale of the property shall be used to retire any outstanding indebtedness incurred by the city in the acquisition or improvement of the property. Any remaining net proceeds shall be used to finance other improvements in the capital improvement budget or to retire any other bonded indebtedness.

**Sec. 12.06. Vacation of streets.** The council may by ordinance approved by at least five members of the council vacate any street or alley or other public grounds thereof within the city.

Such vacation may be made only after published notice and an opportunity for affected property owners and public to be heard, and upon such further terms and by such procedure as the council by ordinance may prescribe. A notice of completion of such proceedings shall be filed with the proper county officers in accordance with law.

**Sec. 12.07. City to succeed to rights and obligations of former city.** The city shall succeed to all the property, rights, and privileges, and shall be subject to all legal obligations of the city under the former charter.

**Sec. 12.08. Existing ordinances continued.** All ordinances and regulations of the city in force when this charter takes effect and not inconsistent with this charter are continued in full force and effect until amended or repealed.

**Sec. 12.09. Pending condemnations, improvements and assessments.** Any condemnation, improvement, or assessment proceeding in progress when this charter takes effect shall be continued and completed under the laws under which such proceedings were begun. All assessments made by the city prior to the time when this charter takes effect shall be collected as if this charter had not been adopted.

**Sec. 12.10. Ordinances to make charter effective.** The council shall by ordinance, resolution, or other appropriate action take such steps as may be necessary to make effective the provisions of this charter.

**Sec. 12.11. Present officers continued.** The present officers of the city shall continue in their respective offices and functions and shall continue



to govern the city under the laws and charter previously in effect until the officers provided for by this charter have been elected and qualify. They shall make such financial and other provisions for the fiscal year 19 \_\_\_\_ as will serve to carry on the government until a government

has been set up under this charter, and they shall make provision for the election of the first city council as provided in Chapter 4 of this charter.

Sec. 12.12. This charter becomes effective \_\_\_\_\_, 19 \_\_\_\_



**SOME COMMENTS ON THE MODEL CHARTER FOR MINNESOTA CITIES**

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## SOME COMMENTS ON THE MODEL CHARTER FOR MINNESOTA CITIES

### General Comments

The model charter is based on the modern drafting principles that a charter should deal only with fundamentals, leaving to the council by ordinance the authority to provide more detailed regulations as they are needed. It is, therefore, much briefer than many older charters.

The model charter provides for the council-manager plan of government since this form is democratic and responsive and provides for efficient management. There are included in Appendix A and B of these comments provisions and suggestions by which strong mayor and administrator plans may be substituted. Charter commissions interested in still other plans may obtain on loan from the League copies of Minnesota city charters containing these variations.

One of the principal virtues of the home rule charter mechanism is that it permits each city to tailor-make its charter to its own individual needs and desires. The model charter should be used, therefore, only as a guide. Used with these comments, it can provide charter commissions with a checklist of sample provisions and questions about policy alternatives.

Each section of the charter is commented on individually in this memorandum. Following these section-by-section comments are appendices dealing with strong mayor and administrator plans and alternative methods of electing councilmen. A list of supplementary memos available from the League is also appended.

**Numbering System.** Under the decimal numbering system used in this charter, each section in a particular chapter has the number of the chapter followed by a decimal system and the section number, the latter moved to the second place in the case of the first nine sections. This has the advantage not only of indicating to what chapter a section belongs but of allowing amendments to be placed more easily in their logical position in the charter. If the charter commission prefers not to use this system, it should number the sections consecutively from beginning to end. To facilitate easy reference, it is best to avoid the older practice of starting each chapter with section 1.

### Section by Section Comments

**Section 1. Name and boundaries.** Boundaries may not be changed by charter in Minnesota. For reference some charters contain a statement of the existing boundaries of the city, but because annexations change boundaries frequently, such a statement becomes quickly out-of-date and may be misleading.

To make the existing boundaries readily available to the public, some charter commissions may wish to consider adding a provision like this one, slightly adapted from Oregon model charter: "The city clerk shall keep in his office at least two copies of this charter with amendments and in each copy he shall maintain an accurate, up-to-date description of the boundaries. The copies and descriptions shall be available for public inspection at any time during regular office hours."

**Sec. 1.02. Powers of the city.** Older charters relied on a long list of specific grants in vesting power in the city, but almost all charters recently adopted in this state have included only a broad general grant such as contained in this section. Such a grant is based on the theory that the city should lay claim in its charter to all powers which the home rule provision of the constitution permit the city to assume. It thus permits the city to meet new problems as they arise without the need for a charter amendment granting the specific needed power and it avoids the possibility that by inadvertent omission or ambiguity, more specific grants would be held to deny to the city power which it might have lawfully assumed. Such an omnibus clause is also included in the National Municipal League's model charter.

The all-powers grant assumes that restrictions will be made as needed in other sections dealing with particular matters and that the broad power left to the council to implement charter provisions by ordinance will permit the addition of specific restrictions as needed.

Minnesota Supreme Court decisions generally have given a liberal construction to all-powers grants in city charters. *Park v. City of Duluth*, 134 Minn. 296, 159 N.W. 627 (1916); *State ex re. Zien v. City of Duluth*, 134 Minn. 355, 159 N.W. 792 (1916); *City of Duluth v. Cervený*, 218 Minn. 551,

16 N.W. (2d) 779 (1944); see 7 Minn. Law Rev. 306.321. The strong statement of intent found in the model charter section should be adequate to assure that the omnibus grant gives the city all municipal power that it might receive through more specific grants.

Sample charter provisions containing a fuller statement of municipal power are available to charter commissions on request.

**Sec. 2.01. Form of government.** Any basic form of government—a strong or weak mayor-council form, the commission plan, or the council-manager form—may be validly included in a home rule charter in Minnesota. The commission plan, which enjoyed a brief period of great popularity in the first two decades of the present century, is now largely passe; it has not been adopted in any Minnesota city since the 1914 St. Paul charter, and has now been abandoned by all but one Minnesota city. Modifications in the model charter to substitute a strong mayor-council plan for the council-manager form are included in Appendix A of these comments.

It is not essential that there be a section like this in the charter since the form is spelled out more explicitly throughout the charter, but the section may be helpful both in informing the voters and in showing the general intention of the charter commission with reference to the form of government.

**Sec. 2.02. Boards and commissions.** This section also states one of the major principles of the council-manager plan that all power is vested in the city council and that this power should not be diluted by the establishment of independent boards with administrative powers over particular functions. Health and library boards are specifically mentioned since these are provided for every city by statute; presumably by charter the city may determine to handle these functions through the council instead. Many council-manager cities in the state have so provided. A similar provision is included in the council-manager plan sections of the code relating to non-home rule cities.

While a few cities with administrative utility commissions have retained them when adopting council-manager charters, it is more consistent with that plan to convert such a commission into an advisory one. The utility function is an important one that involves, in a city with a municipal gas or electric system, a significant part of the city's budget, property, and personnel. To divorce

this enterprise from the control of the council and manager seriously curtails the power to direct, coordinate, and set comprehensive policy. Few cities consider a utility commission where the only municipal utilities are water and sewer system.

**Sec. 2.03. Council composition and election.** The size of the council should be adjusted to the size and needs of the city; smaller cities may prefer a five-man council (the size provided by law for statutory cities and in over half the charter cities) while larger cities may wish to increase the size beyond the suggested seven. About a quarter of Minnesota's home rule cities have seven members; only about three have as many as 11.

Many councils serve for two-year terms. Fixing the councilmen's term at that length requires either a shift to annual elections or abandonment of the principle of overlapping terms. If all members are elected at the same time, the chances that winning candidates will receive only a plurality of the votes are substantially increased. One method of meeting this problem, often discussed but seldom used, is the so-called "alley" or "place" system (the plan used for electing judges) under which each council seat is separate from the others for purposes of filings and election. See Appendix C. If the city already has four-year overlapping terms, the exception in the second sentence may be omitted.

While a two-year term for mayor is more common in Minnesota among charter cities and is the general pattern among statutory cities, the trend is toward longer terms for both mayors and councilmen. A few cities with a complete four-year term pattern elect all councilmen and the mayor once every four years. To avoid the possibility of too drastic a turnover at any election, the model follows the more common overlapping term pattern.

The model provides for electing all councilmen at large. There are disadvantages to both the at-large and district or ward systems; the smaller the city the more the advantages on balance favor the at-large system. A League memorandum on the comparative advantages of the two systems is available to charter commissions on request.

Alternate provisions for a ward system and for a combination at large-ward system are included in the Appendix C.

**Sec. 2.04. Incompatible offices.** This prohibition is not required by law but the substance is included in many charters. The National Muni-

pal League model charter extends the one-year prohibition to any compensated appointive city office or employment.

Sec. 2.05. Vacancies. If the charter commission prefers to rely on the state statute setting out grounds for a vacancy in public office, which is not otherwise binding on a city with a different charter provision, it may substitute the following for the first sentence: "An elective office becomes vacant upon the occurrence of any one of the conditions stated in Minnesota Statutes, Section 351.02." The grounds stated in the suggested charter provision parallel the statute but are not identical.

Where neglect of duties for a prolonged period may be a problem, the charter commission may wish to add as additional clauses provisions like these appearing in some charters: "is continuously absent from the city for more than three (?) months, fails to perform any of his duties for more than three (?) months." The last clause is not self-administering and the council declaration of a vacancy in such a case may be tantamount to removal from office. Some charters include an additional section authorizing the council to remove an elective officer for stated causes.

If four-year terms are provided, some charter commissions may wish to subject an appointee to the election process if the term still has two years to run when the next election comes along. If this is desired, the last sentence should be rewritten somewhat as follows: "In each such case the council shall by resolution declare the vacancy to exist and shall forthwith appoint a qualified voter to fill the vacancy. If the unexpired term is more than 28 months, the appointee shall serve only until the day for commencement of new terms of office following the next municipal election and until his successor is chosen at that election for the unexpired term." If this alternative is adopted, it will be necessary to require that persons filing for councilman, if the vacancy was in that office, indicate which term is being sought since councilmanic offices for the full term will also be on the ballot.

Sec. 2.06. The mayor. Consistent with the council-manager plan, this section contemplates that the mayor will be the ceremonial head of the city and preside over the council but otherwise will have no duties except as a council member. Some recent council-manager charters have attempted to build up the mayor's role as political leader by provisions directing the mayor to make recommendations to the council, including an

annual state-of-the-city message.

About half the council-manager cities in the United States provide for council selection of the mayor from council members. No Minnesota council-manager city has followed this practice. There is apparently nothing in the constitution to prevent it, though it might be argued that the statutes imply the direct election of the mayor. (Minn. Stats., Secs. 410.07, 410.16.) The model charter of the National Municipal League begins this section of the charter with the provision, "The council shall elect from its members officers of the city who shall have the titles of mayor and deputy mayor, each of whom shall serve at the pleasure of the council." (The deputy mayor is the equivalent of the president pro tem in the Minnesota model.) If this approach is used, the section on the elective officers of the city (2.03) should be modified accordingly.

Sec. 2.07. Salaries. Minn. Stats., Sec. 415.11, permitting the council to fix the salaries of mayor and councilmen by ordinance with certain restrictions applies to home rule charter cities. The existence of the statute is recognized by this section. There is no statute regulating the compensation of administrative officers and employees.

Sec. 2.08. Investigation of city affairs. The state law provides for an audit by the state auditor (formerly by the public examiner) only on request of the council or on petition of freeholders. In line with good accounting practice, this section requires an annual audit; however, it leaves to the council the determination of whether the audit should be made by the state or by a public accountant. Some charters limit the latter to certified public accountants.

Sec. 2.09. Interferences with administration. The restrictions imposed by this section are intended to preserve the manager's freedom in administrative matters in line with accepted council-manager principles. Like the National Municipal League model charter, the provision recognizes the councilmen's role in discussion, criticism, and advice with reference to appointments and removals.

Earlier charters attempted to impose penalties, including removal from office, for councilman interference in administrative matters, but these have been found unrealistic; they have now been dropped from the NML model.

Sec. 3.01. Council meetings. The requirement for public meetings ties in with Minn. Stats.,

Sec. 471.705. Otherwise, charter provisions on regular and special meetings are not restricted by statute. Since the statute is likely to be amended with some frequency, it has seemed desirable merely to recognize its existence in the charter rather than to set it out explicitly. The Minnesota Supreme Court has indicated that the open meeting law requires that an attempt should be made to notify the public in such a manner as the circumstances permit. Published notice is not required, but if it is not given, posted notice seems essential. (*Sullivan v. Credit River Township*, 299 Minn. 170, 217 N.W. 2d 502 (1974)). If there are two other places where notices are customarily posted in addition to the city hall, these might be appropriately specified in the rule. It also seems desirable, in the light of the court decision and its rationale, to include a requirement in the rule that written notice of a special meeting be given to the communications media. Since the public meeting law applies to committee meetings, adequate notice must be given of them, too.

Sec. 3.02. Secretary of council. The city clerk acts as council secretary in almost all Minnesota cities, but the model permits the use of another officer or employee in the case of special circumstances. There are no statutory requirements.

Sec. 3.03. Rules of procedure and quorum. This is a standard provision.

Sec. 3.04. Ordinances, resolutions, and motions. If the charter commission desires a more explicit provision on what must be done by ordinance, it might consider the comparable provision of the NML model charter, Section 2.12:

"In addition to other acts required by law or by a specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any city department, office or agency;
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;
- (3) Levy taxes, except as otherwise provided in Article V with respect to the property tax levied by adoption of the budget;
- (4) Grant, renew or extend a franchise;

- (5) Regulate the rate charged for its services by a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey or lease or authorize the conveyance or lease of any lands of the city;
- (8) Adopt with or without amendment ordinances proposed under the initiative power; and
- (9) Amend or repeal any ordinance previously adopted, except as otherwise provided . . . with respect to repeal of ordinances reconsidered under the referendum power.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution."

The provision in Sec. 3.04 requiring the recording of votes in accordance with statute is intended to refer to the public meeting statute. Since that statute has already been amended twice since its adoption in 1957, it has been thought advisable not to include it in the charter, thus avoiding having the charter provision quickly outdated by amendment of the law. On the other hand, the charter commission may prefer setting it out so that the public and city officials can see in the charter what the applicable statutory requirements are. If this is the case, the following may be substituted for the second sentence of this section:

"The votes of the members on any action shall be recorded. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute."

Sec. 3.05. Procedure on ordinances. There are no statutory requirements on the subject matter of this section. The state constitution requires three readings on state laws and has a requirement that a state law must deal with a single subject expressed in its title. Some commissions may wish to require three readings on ordinances. Note that there are exceptions for emergency ordinances in the next section. Even without a charter requirement, some councils provide for three readings by council rule.

Sec. 3.06. Emergency ordinances. This section is intended to take care of those rare situations where there isn't time to meet the usual procedural requirements in adopting ordinances. The



stricter the usual requirements (e.g., three readings over three weeks), the more necessary the emergency procedure.

While the council's declaration of emergency is given some weight, the council may not, under such a provision as this, use the emergency clause when there is no emergency.

**Sec. 3.07. Procedure on resolutions.** Since there is no statute restricting the adoption of resolutions, the charter commission is free to provide what it wishes. Usual practice is to permit resolutions to be adopted at the same meeting at which they are introduced.

**Sec. 3.08. Signing and publication of ordinances and resolutions.** Again there are no statutory requirements, except that a state law (Minn. Stats., Sec. 471.62) permits the adoption of statutes, regulations, codes and certain ordinances by reference, as the last sentence recognizes.

**Sec. 3.09. When ordinances and resolutions take effect.** A standard provision; not regulated by statute. The time interval for ordinary ordinances should be long enough to permit circulation of a referendum petition before the effective date, if a referendum provision is included in the charter. If initiative and referendum provisions are omitted from the charter, the last sentence of this section should be deleted.

**Sec. 3.10. Amendment and repeal of ordinances and resolutions.** This provision follows legislative practice. Without some such provision, neither municipal officials nor the public will find it very easy to read a proposed amendment and know what it does to the existing ordinance. There is no statutory requirement on the subject.

**Sec. 3.11. Revision and codification of ordinances.** This section is substantially the same as an enabling statute (Minn. Stats., Sec. 415.02). It is included in the charter for completeness but may be omitted and reliance placed on the statute.

**Sec. 4.01. The regular municipal election.** If the city wishes to continue to elect a justice of the peace, the charter commission may add at the end of the section: "At the regular election there shall be elected, in addition to the mayor and councilmen, one justice of the peace for a two-year term." This is possible under the county court law only if the county court does not hold regular sessions in the city or has not established an ordinance or traffic violations bureau there.

(Minn. Stats., Sec. 487.35.) No court may be established by charter.

The uniform election day law allows any city to use the November date set out here as its election date, and a number of cities hold their election on that date. The alternative usually chosen in new charters is the first Tuesday after the first Monday in even-numbered years, thus combining the municipal election with state and national elections.

Those who favor a separate election argue that (1) voters are likely to be better informed on city candidates and issues; (2) focusing attention on municipal problems is much easier when the city election is held separately; (3) consolidated elections may encourage partisanship at the local level; and (4) in a city using paper ballots, ballot counting errors are minimized when a separate election is held.

Those who favor combining the city election with state and national election argue that (1) there will be a much greater participation in city elections by the voters; and (2) the expense of conducting city elections will be substantially reduced. The smaller the turnout and the smaller the interest at separate city elections, the stronger the argument for the combined election--and vice versa. These arguments are discussed more fully in a League memo cited in Appendix D. Since arguments for separating local and state-national elections seem stronger in larger cities, which also tend to be the home rule charter cities, the model suggests the odd-year date. The statutory code for cities without home rule charters uses even-year elections as the standard pattern with an odd-year option, but these cities typically are small.

Separating the city election by holding it in the spring gives rise to the above arguments, too, but in this case there are some additional considerations involving the relation to the tax and budget year. Proponents of the spring election argue that if it is combined with a fiscal year commencing a short time before the election, there will be a completed fiscal year the report on which can be of interest to candidates and voters. Furthermore, the new council will have to operate under the old council's tax levy decisions for shorter time (at least six months) than if the November date is used and councilmen take office in January. If the calendar year is used as the fiscal year, the same is true of the current budget. Proponents of the fall election minimize the budget argument, pointing out that the council has discretion over only a very small part of the budget; fixed charges

(e.g., debt retirement), incremental changes like salary increases and inflation, and tax limitation laws, all leave so little for council discretion that it is not important that the new council must live under the old council's budget for a longer time when fall elections are held. A fall odd-year election means that the voters are asked to go to the polls only once every 12 months. Furthermore, the calendar year has become almost standard as the fiscal year in Minnesota. (including all of the non-home rule charter cities) and this is more practicable with a November election.

Practice among Minnesota home rule cities is widely split. About 38 of the 99 home rule charter cities hold elections from February to July, mainly in March through May. Of the rest, 11 hold their elections in December, the others in November. Several of the last still hold annual elections and the others are almost evenly split between even and odd years.

Annual elections seem unnecessarily frequent, though this is still the pattern in more than 30 cities. They do have the advantage of permitting the use of overlapping terms of two or three years. Overlapping terms can be provided with biennial elections only by going to four-year terms, now the pattern in Minnesota's non-home rule cities (about 755), which all hold November elections.

Sec. 4.02. Special elections. The subject is covered by state law, Sec. 205.10, and can be omitted from the charter if desired. It is included for the sake of completeness.

Sec. 4.03. Filing for office. The state law (Secs. 205.13, 205.15), applicable in the absence of a charter provision, provides for filing for office and fixes the fee at \$20 in first class cities, \$5 in second and third class cities, and \$2 in fourth class cities. The appropriate figures may be changed by local charter.

Under the Minnesota Constitution, any voter 21 years old or older may hold local elective office.

Some charters provide for getting candidates on the ballot by petition (nomination by petition). Sometimes the petition requirement is minimal—ten voters, for example; in other cases it may be substantial enough to discourage insincere or publicity-seeking candidates. Experience in the particular city should indicate whether or not a petition requirement serves a sufficiently useful purpose to justify its inclusion. Generally, Minnesota cities either have no petition require-

ment or a nominal one. The NML model charter suggests alternative provisions; a sponsor-deposit method in which ten petitioners act as sponsors and the candidate must post a deposit which is refundable if the candidate withdraws or fails to secure a specified percentage of the vote; and a long petition method in which the candidate must have petition signers equal to one per cent of the last vote for governor.

If the charter commission wishes to consider a petition requirement, here is a brief sample provision:

"Sec. 4.03. Nominations by petition. All elective officers provided for by this charter shall be nominated by petition. The name of any voter of the city shall be printed upon the ballot as a candidate for an office whenever a petition signed by a number of voters equal to at least \_\_\_\_\_ per cent of the total number of votes cast at the last regular municipal election has been filed with the city clerk in his behalf at least two weeks before the election and a filing fee of \$\_\_\_\_\_ has been paid. No elector shall sign petitions for more candidates for any office than the number of persons to be chosen for that office at the election; should he do so, his signature shall be valid only as to the first petition or petitions filed. The form of the nomination petition shall be prescribed by the council or, in the absence of council action, by the clerk."

A more stable figure can be obtained by basing the petition requirement upon the number of registered voters at the time the petition is filed.

As in most of the larger cities, a primary election may be held to limit the number of candidates from whom the voters finally make their choice. As long as the charter does not prohibit or provide for a primary election, the council may by ordinance or resolution provide under Minnesota Statutes, Section 205.11 for a primary election to held at least two weeks before the municipal election. An appropriate section may be added either fixing the date or authorizing the council to fix the date at least a prescribed minimum period before the regular election. About a third of Minnesota's home rule charter cities have primary election provisions in their charters. A simple provision for a primary might read as follows:

"Sec. \_\_\_\_\_ Primary Elections. On a Tuesday at least four weeks in advance of the regular municipal election as determined by the council, there shall be a primary election for the selection of two

nominees for each office to be filled at the municipal election, unless no more than twice the number of candidates to be elected file for any elective office."

If a primary election is provided by charter, the concluding clause of Sec. 4.03 ("or, if there is no primary election, on the municipal election ballot") should be omitted.

Sec. 4.04. Procedure at elections. This section permits the council by ordinance to add supplementary provisions for local elections and even, where the state law is not binding, to supersede state law by different provisions. In general, however, the intent is to rely on state law wherever the city can do so. In practice this is what has happened in the Minnesota cities with similar charter provisions.

Chapter 5. Initiative and referendum. These devices for popular control over legislation and elective officials came into city government mainly with the introduction of the commission plan and the council-manager plans early in this century. They have been adopted by about a third of Minnesota's home rule charter cities, including most of the cities with recent charters. While many people oppose the use of these devices as being inconsistent with representative government, others strongly favor them as providing checks on councils and levers for accomplishing programs with broad popular support—where city officials or the governing body are reluctant to take desired action. A few charters provide for the referendum, by which an election test can be secured on an ordinance which is widely questioned, but not the initiative, by which the people can initiate legislation and secure its passage by the election route in the face of council objection.

Most experts would agree that if these devices are authorized by charter, they should be used sparingly; the council should not be by-passed or over-ruled by the initiative or referendum except in extreme cases. Consequently, procedural requirements, particularly those for petitions, should be difficult—though not, of course, impossible.

Experience in Minnesota indicates that initiative and referendum provisions have been conceived as safeguards against council inaction or abuse and have been used only sparingly in practice.

A third device for popular control, the recall, usually has, in the past, been included in charters

containing initiative and referendum provisions. The recall provides a mechanism for shortening the term of an incumbent in cases of strong voter dissatisfaction. A special election is held after the filing of a petition, usually with a more difficult signature requirement than for an initiative or referendum petition, and, if a majority votes to recall the challenged candidate, he is recalled from office and another candidate is chosen by the voters to replace him.

The Minnesota Supreme Court has held that recall is a form of removal and a constitutional provision (Art. XIII, Sec. 2) limits recall elections to those cases where there is malfeasance or non-feasance in office. *Jacobsen v. Nagel*, 255 Minn. 300, 96 N.W. 2d 596 (1959). So viewed, recall seems impractical since the council cannot be compelled to call a recall election unless the grounds stated do constitute malfeasance or non-feasance, often not something which can be tested by the election process. No provisions for recall have been included in the model for this reason.

Sec. 5.01. Initiative and referendum. This section should be recast, of course, if either of these devices is omitted.

Sec. 5.02. Petitions. The charter commission may wish to base the percentage on the number of registered voters. The permanent registration percentage should, of course, be half or less that which is appropriate when the last vote for mayor is used. In either case, the figure should be substantial. The NML model suggests 15% of the number of registered voters at the time of the last city election.

Use of a sponsoring committee is suggested so that there are people to whom the clerk may turn in case of questions or insufficiency. The committee is also given authority to approve an amended ordinance to avoid an election under later sections.

Sec. 5.03. Determination of sufficiency. The number of days should be related to the amount of work required in the particular city; perhaps a shorter time may be sufficient in a small city.

Sec. 5.04. Disposition of insufficient petition. The sponsoring committee should have a reasonable time within which to make up insufficiencies but the petition should not be allowed to dangle indefinitely.

Sec. 5.05. Initiative. The model permits the

council to make changes in the ordinance and still avoid an election if the new version is not disapproved by a majority of the sponsoring committee. Often the proposed ordinance may be poorly drawn and the improvement made by the council amendments will be agreeable to the petitioners, all of whose objectives may have been met by the ordinance as finally adopted. A 4/5 or unanimous approval may be substituted if desired.

Some charter provisions forbid the council from repealing or amending ordinances approved by the people under initiative and referendum provisions and some would bind the council in this way for a brief period, like one year. Because it is difficult to anticipate the effect of changes of circumstances, it seems wiser not to put such restrictions in the charter. Being a popularly elected body, a council is very unlikely to change an initiated or referred ordinance unless the change is clearly acceptable.

Some charters permit petitioners to force a special election if they sign in larger numbers than required to force an election with council option as to time—25 per cent instead of 20 per cent of the voters, for example. No such provision is included in the model, which requires a special election if a regular election is more than 120 days away; the time may be lengthened if preferred or the entire matter may be left to the council.

The exemption of certain ordinances from the initiative and referendum follows the NML model. As the commentary on that charter states, "Neither the initiative nor the referendum should be applicable to the budget, capital program, any ordinance relating to the appropriation of money or the levy of taxes, or, of course, to salaries of city officers or employees, for this would interfere with responsible officials striving to achieve a properly balanced long-range fiscal program." Charter commissions may wish to consider adding other types of ordinances to the list of exclusions, for example, some persons have argued that zoning ordinance changes are not suitable vehicles for city-wide elections under initiative and referendum provisions.

**Sec. 5.06. Referendum.** This has the same exceptions as the section on the initiative. See the last comment.

Any requirement for a special election in certain cases would be out of place in the referendum with the possible exception of a referendum on an emergency ordinance.

**Sec. 6.01. The city manager.** Consistent with council-manager theory, this section makes clear that the manager serves at the pleasure of the council and can be given no fixed term by contract or stipulation. To permit him to get his side of the story before the public in case of removal, he is given the right to a hearing if he has already served for a year, but it is made clear the council still has the unfettered right to remove him after the hearing is held.

A requirement that the manager live within the city after appointment can be added if desired. The section follows the NML model in permitting the manager to live outside the city while in office only with the approval of the council.

**Sec. 6.02. Powers and duties of the city manager.** This section gives the manager the necessary authority to carry out his responsibility as the chief administrative officer of the city. A few cities provide for a chief administrative officer who is subject to greater control by the council, such as a veto power over appointment of department heads. A sample plan of this kind is outlined in an appendix.

**Sec. 6.03. Administrative organization.** Some charters provide for incorporating material on administrative organization and procedure in a comprehensive administrative code and, in some cases, in order to give the code more stability, require an extraordinary majority to adopt or amend it. Under the model as drawn, the council could provide such a comprehensive ordinance approach if it wished but no special procedural restrictions would apply. Former versions of this model required the adoption of an administrative code, but the requirement was so often honored in the breach that it has been dropped.

Departmental organization is sometimes spelled out in charters, particularly in larger cities. The model assumes, however, that this should be left to subsequent council action. If departments are to be established by charter, they should be provided for in general terms without a detailed listing of functions of divisional organization.

**Sec. 6.04. Subordinate officers.** The model explicitly provides only for one administrative officer, the city clerk, in addition to the manager. There will be others in every city, but it seems desirable to leave the administrative structure as flexible as possible. Under the model, offices could be abolished or combined without restriction.

Sec. 6.05. Purchases and contracts. Many Minnesota charters require that contracts in excess of a stipulated amount may be made only after competitive bidding. The amounts are now specified by the uniform contracting law, Minn. Stats. Sec. 471.345 ff., and since those dollar amounts are subject to statutory change with inflation and changed conditions, it seems wise merely to refer to the law in the charter.

Older versions of this charter used as the maximum figure for the manager's authority to make purchases without advance council approval the figure fixed as the maximum amount of a contract that could be let without bids. If that principle were followed here, the figure would be \$10,000, the amount above which competitive bids would be required under the uniform contracting law.

Sec. 7.01. Council to control finances. The authority contained here is included in the omnibus grant in Sec. 1.02 but it is included here to call specific attention to the council's role with respect to finances. It can be omitted if desired.

Sec. 7.02. Fiscal year. The calendar year is the year most commonly used in Minnesota, is consistent with a November election schedule, and coincides with the property tax year. Tax-anticipation borrowing may be necessary, however, to a greater extent than if a July 1 date were used for the commencement of the fiscal year as in the state and federal governments. See also comments on Sec. 4.01 relating to the date of election.

Sec. 7.03. System of taxation. The authority given to the council by this section presumably is included in the omnibus grant of Sec. 1.02, but it is included here as fortification in view of the strict view taken by some courts of grants of local tax authority. Local income and sales taxes have both been pre-empted by the state except in those cities already having them, and few taxes are suitable for levy and collection by cities, particularly small cities and those in metropolitan areas, but the charter provision will minimize questions of adequate authority for a city where some non-property tax source must be found to supplement other city income, any tax ordinance would, of course, be subject to a referendum on petition if initiative and referendum provisions are included in the charter.

As drawn, the section imposes no property tax limit beyond that mandatorily imposed on the city by state law. It is legally possible to include a more restrictive limit by charter, but this does not seem wise.

Sec. 7.04. Submission of budget. The September 1 date for submission of the proposed budget to the council in the absence of a local budget calendar is suggestive; it gives the council about five weeks to consider and adopt the budget. If this is not enough time, an earlier date can be substituted. More flexibility is given by authorizing the council to establish a budget calendar by ordinance. This is the approach taken in the 1970 St. Paul charter. Dates for earlier steps in the budget process, such as the submission of budget recommendations by department heads to the manager, can always be provided by the manager himself without an ordinance.

The budget section is flexible about the type of budget to be submitted. It would allow the council to require a program budget, but it would not make this a charter requirement. A detailed classification of revenues, expenditures and specific funds would be left to ordinance or administrative rule to the extent that it is not prescribed by state law. The state auditor (formerly the public examiner's office) has the function of prescribing a uniform system of accounting and reporting by cities (Minn. Stats. Sec. 215.08, 215.10, 215.13, and 6.46), a fact which necessarily influences the development of local budgeting and accounting systems.

It is sometimes argued that if all funds are subjected to the budgetary process, including bond issues voted by the people and special assessment projects initiated by petition of benefited property owners, proceeds of a bond issue authorized by the people earlier in the year could not be spent until the following January after it had been included in the annual budget; similarly a petition of property owners for a local curb and gutter project signed up in April could not result in construction until the following year. The provisions on budgeting are not quite this rigid, however, since the council is authorized by Sec. 7.08 to add to the budget where anticipated income exceeds estimates, and in these cases, income from bond issues would have been added. If the charter commission decides that the provisions of the model might give a problem in this connection, it might consider adding a provision like this one contained in a few local charters: "The council may in its discretion permit elimination from the budget estimates of expenditures of bond issue funds, utility funds, and special assessment funds."

The complete financial plan involves three parts: the current operating budget, the five-year capital program coordinated with the annual



budget, and the annual budgets of city-owned utilities. The model charter section would permit indicating only the surplus or deficit in utility operations in the budget itself on the assumption that this makes possible a better understanding of the city's fiscal picture and plans.

**Sec. 7.05. Capital program.** This section is intended to compel long-range planning of capital improvements and to relate that planning to the current budget. It seems desirable to provide for submission of this program at an earlier date than the budget to force independent and careful study of the long-range program and its implications for current financing. Adoption of the program by August 15 allows half a month to get actual capital expenditures for the next year into the capital outlay section of the proposed annual budget before it is submitted on September 1. Dates may easily be changed to conform to local needs.

Following the NML model, the League model requires that the capital program include estimated operating and maintenance costs of proposed capital projects. It would be hoped that this might force more realistic facing up to the long-term financial implications of proposed capital projects.

**Sec. 7.06. Council action on budget.** If it is thought that September 1 is too late, an earlier date may be substituted, as in Sec. 7.04. The earlier the date, the longer must be the manager's projections in preparing his proposed budget.

The council is free to make whatever changes it wishes in the manager's proposed budget except that it may not provide for expenditures in excess of anticipated income. Under state law, it may not reduce the levy for debt service below that necessary for amortization; that levy will have been made for the entire period of each bond issue before the bonds are sold and the council cannot forego the levy without providing substitute debt service money. (Minn. Stats. Sec. 475.61.)

The October 10 date for certifying the annual tax levy to the county auditor is prescribed by statute (Minn. Stats. Sec. 275.07). The date for council adoption of the budget keys in with the levy certification date.

The model will permit the council to make lump sum appropriations for each department and agency, and thus leave more discretion to the manager in the execution of the budget, but it would also authorize the council to make its budget

decisions in more detail. The provision follows the comparable statute applicable to council-manager plan non-home rule cities. (Minn. Stats. Sec. 412.711.)

**Sec. 7.07. Enforcement of the budget.** These are standard provisions to assure that the budget is complied with. Some charters provide for systems under which the manager makes quarterly allotments to assure that the full appropriation for an item is not spent in the first part of the year when the need continues through the year. The model does not include such a provision on the theory that it may be too cumbersome for small cities and that where it is needed, the system can be instituted by the city manager or by the council without having a specific provision in the charter. While the restrictions included in the section are intended to insure that the city lives within the budget and expenditures conform to the budget plan, the section does not contain the requirement, common in past charters, that every disbursement must be made by check. It would thus permit use of "checkless" payrolls which have been utilized by several cities recently.

While it is common practice to require all claims to be approved by the council, it is doubtful that council approval provides any necessary or desirable safeguards where the charter has adequate budgetary and accounting controls. This section, taken with Section 6.05 on purchases and contracts, authorizes an alternative that seems preferable: permitting the manager to make all purchases and contracts without such a routine check whenever the amount involved is less than a specified figure and requiring larger contracts to be entered into by the council itself. A similar statutory provision applies to non-home rule cities operating under the council-manager plan. (Minn. Stats. Sec. 412.691.)

**Sec. 7.08. Alterations in the budget.** This section is intended to assure that necessary changes can be made in the budget during the year but only to the extent warranted by the income-expenditure picture. Council action would be required to authorize increases and transfers and the council would be permitted to require reductions. The NML charter would require transfers between departments to be made by the council but would permit the manager to transfer within the department as a necessary administrative tool.

This model does not contain a provision like the NML model providing that unencumbered appropriations lapse at the end of the year. If the charter commission believes that it is not

sufficient to leave this to the manager and council through the budget adoption and modification process, a provision for lapse should be added. It has been omitted because of the abuses and extravagances that automatic lapse provisions can encourage. If a lapse provision is included, it should treat appropriations for capital projects differently. The NML provision permits these to continue unless no expenditure has been made on the project for three fiscal years. Supporters of the lapse provision argue that without such a requirement, the city's appropriation in each succeeding year would be added and that the practice would encourage the building of surpluses within departments, thus increasing the problem of administrative control.

**Sec. 7.09. Funds.** Most older charters contain a detailed list of funds which the city is required to keep. Some funds are required by statute, like a bond sinking fund and improvement fund, some will be required when revenue is dedicated to a particular purpose, and fund needs will change quickly. It has seemed better not to enumerate prescribed funds in the charter but to leave their establishment to the council. The NML charter contains no section on funds.

**Sec. 7.10. City indebtedness.** The state statutes, Chapter 475, contain a complete bond code setting out a debt limit, authorized purposes for the issuance of bonds, and a procedure for issuing bonds. The charter does not need to contain a provision on the debt limit (beyond referring to the state law) unless the intent is to decrease the limit that would otherwise apply. The state procedure is adequate and in large part prescribed for home rule charter cities as well as others; in this respect the charter need only make a decision on election requirements for bond issuance. The state law authorizes a home rule charter city to issue bonds for any capital purpose unless forbidden by charter; consequently, nothing is needed beyond a reference to the law unless the charter commission wishes to propose further limitations.

On the election question, the model follows the general practice of requiring popular approval of bond issues except those permitted by law or charter, like tax anticipation certificates, most local improvement bonds, and bonds to pay judgments. A few charters go farther and would merely subject bond issues to the referendum process; thus an election would be required only if a referendum petition were filed. A compromise might require a referendum without petition on larger issues.

**Sec. 7.11. Anticipation certificates.** Some such provision is necessary to provide money to meet current needs before taxes or aids are collected and turned over to the city. The model departs from the city code in permitting issuance of certificates in the amount of anticipated aids in addition to the amount of the levy; some charters limit the amount to 90 per cent of the levy or less. The interest maximum of 7% imposed by statute now seems to prevent lower charter minimums for public obligations (Minn. Stats. Sec. 475.55). No provision on the interest rate is included in the charter.

**Sec. 7.12. Emergency debt certificates.** This section permits borrowing to meet unforeseen emergencies but requires the debt to be repaid in three years. A 1973 state law (Ch. 61) permits any city to issue three-year certificates to finance extraordinary expenditures arising "by reason of any natural disaster or other public emergency." The charter provision also permits issuance of these certificates when receipts become insufficient from some unforeseen cause. If the state law is considered sufficient, the charter provision may be omitted or recast to refer to the statutory authority.

It is sometimes argued that in cities with a background of sound fiscal practice, the council should be able to make simple bank loans to finance relatively minor capital improvements without going through the formalities of a bond issue or issuing certificates of indebtedness under the limited conditions provided by this section. Councils of third and fourth class cities and councils of non-home rule cities are authorized by statute to acquire property by contract for deed or conditional sales contract (Minn. Stats. Secs. 465.71, 412.221, Subd. 2), but this authority is not suitable for financing construction of a building on a lot so acquired, for example.

Charter commissions wishing to consider broadening the authority granted by the model might look at the following, adapted from several existing Minnesota charter provisions: "Whenever the council by resolution deems it necessary, it may borrow money from a bank in the city for the purpose of financing any authorized capital improvement, but the aggregate amount of all such loans outstanding at one time shall not exceed one-third of one per cent of the assessed valuation of all taxable property in the city, and each such loan shall be payable within a maximum period of five years." The assessed valuation limit is based on the provision on installment purchases in the city code; it may, of course, be changed,

or a different type of maximum substituted, or, if the charter has referendum provisions, the loan might be subjected to a referendum on petition. Since any such loan would constitute an "obligation" of the city within the meaning of the state debt code, a levy for its retirement would have to be made before the loan could be made. (Minn. Stats. Sec. 475.61.)

**Sec. 8.01. Power to make improvements and levy assessments.** This authority is presumably embraced in the powers granted by Sec. 1.02 but is included here because of the strict construction that many courts have given to special assessment authority. This rule that the total assessments may not exceed the cost and that individual assessments may not exceed the benefit simply states a constitutional requirement.

**Sec. 8.02. Assessments for services.** A number of current services listed in the state local improvement code (Minn. Stats. Ch. 429) may be financed in the same manner as special assessments. The model charter provision is stated in more general terms to include services that may not be covered by the code.

**Sec. 8.03. Local improvement procedure.** The state local improvement code applies to every home rule charter city unless the charter provides for making the improvement under the charter. The code also permits the charter to make the code exclusive. Because the code is a good law that is almost universally used for local improvements outside the largest cities, and because the bonds it authorizes are much more readily marketable than obligations issued for local improvements under a charter, the model charter proposes to make the local improvement code exclusive; however, if there are any local improvements not covered by the state law, this provision empowers the council to provide for them by local ordinance.

**Sec. 9.01. Acquisition of property.** The eminent domain authority in the first sentence parallels a provision in state law applying to all municipalities. (Minn. Stats. Sec. 465.01.) The second sentence requiring use of the state eminent domain procedure is now also a statutory requirement. (Minn. Stats. Sec. 117.011.)

**Sec. 10.01. Franchises required.** This section requires a franchise before any permanent or semi-permanent structure may be placed in or on streets or public places. It thus applies not only to public utilities but to any other purpose on the grounds that granting any such privilege should be subject to careful safeguards. The chapter

could be limited to public utilities by eliminating the phrase "or for any other purpose" at the end of the first sentence.

Requiring the use of non-emergency ordinances for franchises subjects each franchise to the possibility of a referendum on petition before it goes into effect.

The provision on payment of the cost of publication of the franchise ordinance by the grantee is found in many charters, but even without it the council may require this as a condition of granting the franchise. The cost is, of course, not significant.

Telephone companies are regulated by the state and not subject to local franchise provisions. The phrase "Except as otherwise provided by law" is intended to recognize this exception, as it would recognize electric and gas utilities, too, if they were in the future to be made subject to state regulation.

**Sec. 10.02. Term.** State law (Minn. Stats. Sec. 410.09) prohibits perpetual franchises and requires exclusive franchises, which are limited to 25 years, to be approved by the voters. There is no statutory limit on the term of a non-exclusive franchise but a charter may impose such a limit. In general, the term of a franchise should be long enough to attract offers from the best utility interests and short enough to give the municipalities the right to make a change if the utility is not run to the satisfaction of the general public. The model recognizes that in rare cases a long franchise might be justified, but it is sufficiently questionable to require approval of the voters. Franchises of 20 years or less would be subject to referendum only on petition.

In considering this section, the charter commission should bear in mind the fact that a state law authorizes any city, irrespective of franchise or charter terms, to acquire a utility at the end of any five-year period following the granting of a franchise by paying the purchase price determined in proceedings similar to a condemnation. A maximum of 20 years, without a required vote, as suggested in this section of the model charter seems reasonable, but some charter commissions may wish to lengthen this period to 25 or 30 years.

**Sec. 10.03. Public hearing.** A public hearing is not required by law but seems desirable on a matter of such long-term importance. As drawn, the section applies only to franchises granted to public utilities but it can be extended to other



franchises as well by making the first clause read, "Before any franchise is adopted."

Sec. 10.04. Power of regulation reserved. A state law (Minn. Stats. Sections 454.041-.043) allows third and fourth class cities to fix electric and gas rates by ordinance and regulates the procedure. This has been held to supersede conflicting charter provisions. *Western States Utilities Co. v. City of Waseca*, 242 Minn. 302, 65 N.W. (2d) 255, (1954). The model charter section would make clear that the city has the authority to regulate rates by ordinances even though, if the city is a third or fourth class city, the state law imposes limits on the exercise of the city's authority. It must be conceded, however, that rate regulation by ordinance has not been very effective, particularly in dealing with large utility systems serving many municipalities.

A franchise may contain provisions for the payment to the city of a franchise fee, which typically is fixed at a percentage of gross earnings within the city, but as a franchise fee it is a contract stipulation that must be agreeable to the parties. A few charters contain provisions requiring the payment of such a fee. The desirability of such a provision is debatable since in practical effect it becomes a charge upon utility consumers for the benefit of the taxpayers, but some would support such a provision on the same basis that they would support a tax on utility earnings. St. Paul's charter contains a typical provision of this kind: "Every corporation or person exercising any franchise . . . shall pay to the city a franchise fee in a sum equal to at least five percent of the gross earnings derived or accruing from the exercise or enjoyment within the city of the franchise. This section shall apply to every franchise granted prior to the adoption of this charter and to every other franchise unless the ordinance granting it exempts the grantee and others holding through or under them from the franchise fee."

Sec. 10.05. Renewals or extensions. While it is arguable that renewals should be for a shorter term, it seems wiser to leave this matter to the council, subject to the same restrictions as apply to original franchises.

Sec. 11.01. Acquisition and operation of utilities. The general authority stated here is presumably included in the comprehensive grant of power in Section 1.02. The section would subject any proposed acquisition or construction of a utility to a referendum on petition under the referendum provisions of the charter. If the charter commission

wishes to provide a referendum in every case, something like the following might be substituted for the last sentence: "The city shall not acquire or construct any public utility unless the proposition to acquire or construct it has been approved by a majority of the electors voting on the proposition at a general or special election."

Sec. 11.02. Regulations and rates. This section is included to round out the municipal utility grant of authority. It can be omitted if desired.

Sec. 12.01. Official publication. In a city with more than one legal newspaper of general circulation, the requirement for annual designation means that the people are assured that all official publications of the city will be in that paper for at least a year. In rare circumstances, it may permit the city to secure bids or otherwise negotiate on price. The provision makes clear also that city publication need not be confined to matters that are legally required to be published.

Sec. 12.02. Oath of office. The oath given here is substantially that provided by Article 5, Sec. 8 of the state constitution and is required to be administered to any public officer by Minn. Stats. Sec. 358.05. It is included here for convenient reference and to name certain specific officers to whom the oath requirement applies.

Sec. 12.03. Official bonds. This section requires bonds of certain specific officers who can be expected to have access to city funds and it gives the council discretion as to the form of the bond.

Sec. 12.04. Official interest in contracts. This section in effect merely refers to the applicable state law, which applies only to those officers who have a discretionary part in the making of a contract. Some charters go beyond this provision to prohibit or regulate other contracts not within the scope of the state law. The 1971 St. Paul charter, for example, adds this language to the provision of the model section: "Any city officer or employee who has a direct or indirect financial interest in (1) any contract with the city not prohibited by the foregoing provision or any law or (2) any other matter with the city, shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as a city officer or employee in the making or performance of such contract or in taking official action on such matter. Any city officer or employee who willfully conceals such a financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or

position. Violation of this section with the express or implied knowledge of the person or corporation contracting with the city shall render the contract voidable by the city council or by a court of competent jurisdiction."

**Sec. 12.05. Sales of real property.** The requirement that sales be by ordinance presumably subjects the sale to the right of referendum on petition. If the charter commission thinks this is an unnecessary procedure in the light of the particular city's experience, the sentence may be omitted. The other provisions assume that since a capital asset is being sold, proceeds ought to be put to a capital use, with priority to paying off any debt attributable to the acquisition or improvement of the property sold.

**Sec. 12.06. Vacation of streets.** A street or alley vacation may have such drastic consequences for people directly affected and in some cases the general public that an extraordinary vote of the council and a public hearing are made requisites by this section. Some charters make a petition of a majority of abutting property owners a prerequisite, but such a requirement on occasion may prevent a vacation where an overriding public interest justifies the project. The words "other public grounds" permit vacation of utility easements, etc.

**Sec. 12.07. City to succeed to rights and obligations of former city.** This section, the next section, and the substance of Sec. 12.09 are largely covered by state law (Minn. Stats. Sec. 410.15). They are put here for completeness and to avoid a source of possible concern to the voters.

**Sec. 12.10. Ordinances to make charter effective.** This is a standard provision merely expressing the duty of the council to take the necessary steps to put the charter into effect.

**Sec. 12.11. Present officers continued.** This section is included to call attention to the fact that some provisions will be needed to secure an orderly transition to the new government. As drawn, the section assumes that except for the provisions relating to the election of a mayor and council, the new charter will not take effect until the new officers are elected and take office. Alterations will be required if a different schedule is contemplated for getting the charter into effect.

This section is related, of course, to the effective date provisions of Sec. 12.12.

**Sec. 12.12. Effective date.** Under the local government constitutional amendment of 1958

and Minn. Stats. Sec. 410.11, the charter becomes effective 30 days after adoption unless the charter fixes a later date. In many cases, the effective date section must be more complex, sometimes even fixing different effective dates for different parts of the charter. For example, if the charter changes the form of government, and increases or decreases the size of the council, the charter might make the main body of the charter effective when the new council takes office (or at an even later specified date) but make the election sections effective early enough to get the right officers chosen. This section should be spelled out carefully in the light of all circumstances.

#### Omissions from Charter

There are many subjects on which the model charter contains no provisions. Included among these are the following:

1. **Intergovernmental relations.** Some charters, including the model charter of the National Municipal League, contain a section authorizing the city to perform its functions jointly or in cooperation with other political subdivisions, states, and the United States. The subject seems amply covered by the intermunicipal or joint powers act, Minn. Stats. Sec. 471.59.

2. **Provisions establishing department heads, department structure, and other offices.** Apart from naming the city manager and clerk, the charter does not establish any administrative structure for the city. It has seemed more desirable to leave this to ordinance. Occasionally a charter commission will feel required by the politics of the local situation to continue some or all of the existing departments by name. This should be resisted for its inflexibility, but in any event it is best neither to define functions nor to set up the structure of named departments.

3. **Planning.** Except for the provisions on capital programming, the model charter omits all mention of planning, not because it is not an important subject but because the comprehensive planning law, Minnesota Statutes, Section 462.35, et. seq., seems adequate for the purpose. Charter provisions might be considered only in special circumstances: if a planning commission were to be required, not merely permitted; or its composition were to be fixed by charter; or if the charter were to make a choice among the alternatives otherwise permitted by the planning law. Should there be, for example, a board of zoning adjustments and appeal separate from the planning commission? Should its decisions be binding in any cases or merely recommendatory? Should the

council as well as the planning commission adopt the comprehensive plan? Unless the charter commission has strong views on any of these matters, it seems advisable to rely only on the planning law for local powers and responsibilities for planning. Implementation would then be left to the council.

4. Charter commission membership. Minn. Stats. Sec. 410.05, Subd. 1, authorizes a city to provide in its charter for fixing the size of the charter commission at seven to fifteen members, but apparently this may be done only by charter amendment, not the original charter. A city adopting a new or revised charter in the same manner as an original charter, as it is permitted to do under Minn. Stats. Sec. 410.24, ought to be able to include in it a section on charter commission size if it wishes since it could have adopted the section as a separate amendment and there is only a technical difference between the two situations.

Any section on this subject submitted as part of a revised charter or a separate amendment must recognize that, if the existing commission consists of fifteen members, the four-year terms of seven or eight members will be expiring at one time and the terms of the others will be expiring two years later. A city proposing to cut its charter commission to the minimum of seven might draft the amendment to decrease the number to eleven at the end of the first expiring terms and to seven two years later. The district judges would then appoint four instead of eight and three instead of seven.

5. Annexation procedure. Contrary to the situation in some other home rule states, a Minnesota city may not by charter annex land or regulate the procedure for annexation. This is exclusively a legislative matter in this state.

6. Tort liability. At one time cities could by charter curtail their tort liability by requirements for written notice of defects before the cause of accident arose. Such provisions have been made invalid by statute and the principles of municipal liability for torts are now embodied in state law applying to all municipalities (Minn. Stats. Ch. 466).

7. Modification of special laws. If there are any special laws applying only to the city, they should be examined to see how they square with the proposed charter. Where consistent with the charter, their provisions may be incorporated in the charter; if not, the charter commission should

consider specifically superseding them. The Minnesota Constitution, Article XI, Section 2, authorizes a city by charter to modify or supersede a special law (But this does not prevent the legislature from adopting a later special law on the same subject). At any rate, it seems advisable to examine existing special laws in the light of the charter and to mention them specifically in the charter to avoid any difficulties of interpretation later. A simple section like the following should be adequate to replace special laws with charter provisions:

"Sec. 12.\_\_\_\_ Laws superseded. The following laws specially applicable to the city are superseded by the provisions of this charter and made inapplicable to the city:

Laws 1947, Ch.\_\_\_\_, relating to the tax levy of the city.

Laws 1957, Ch.\_\_\_\_, as amended by Laws 1961, Ch.\_\_\_\_, establishing the municipal election day.

If any special laws are to be continued, a section to accomplish this objective might read:

"Sec. 12.\_\_\_\_ Laws continued. The following laws applicable to the city are expressly continued in effect and made a part of this charter, except that if any enumerated law denies to the city a power granted by this charter, this charter shall prevail to that extent:

Laws 1965, Ch.\_\_\_\_, establishing a system of police pensions in the city.

Laws 1971, Ch.\_\_\_\_, authorizing a bond issue for the construction of a city hospital without regard to the city's debt limit."

8. Procedure for charter amendments. The procedure by which the charter can be amended or revised is prescribed by Constitution and statute and, contrary to the situation in some states, no different provisions may be validly provided in the charter itself. As a matter of information to the people in showing that the charter is amendable by established procedures, some charters include a simple provision like the following:

"Sec. 12.\_\_\_\_ Charter amendments. This charter may be amended or revised in any manner provided by law."

The statutory procedure is too detailed and it is subject to too frequent change to make it feasible to include all the statutory provisions in the charter.

9. Veterans' preference. State law (Minn. Stats. 197.45-.46) provides for veterans' preference in local government employment. These

provisions may not be modified by a home rule charter. The only relevance of the statute for local charter commissions is in considering the establishment by charter of a formal civil service system. Veterans' preference may have a more substantial impact upon appointments and promotions in the city service if the city has "civil service" with a formal examination system than if it does not.

10. Board of equalization. Minnesota Statutes, Section 274.01 provides that the council of every city shall serve as a board of review of property tax assessments except where the charter provides for a board of equalization. Thus no section is needed in the charter on this subject unless the city wishes to provide for a board different from the council. A few cities do so, some using a committee of the council, some a board of designated city officers (sometimes including one or two councilmen); rarely, it is a board made up of lay citizens with special knowledge and experience. While the model charter omits any mention of this subject, an appropriate section can be added after Section 7.03 on the tax system if a special board of equalization is desired.

## Appendix A

### Alternate Provisions for a Strong Mayor-Council Plan

The conventional strong mayor-council plan places in the mayor substantially all the responsibility given the city manager in the model charter but provides for the kind of separation of powers between the executive and legislative found in the federal and some state governments. Thus the mayor is not given a position on the council but he is given a veto power over council legislation. Since he is an independently elected official, he is not as directly responsible to the council as the manager, who is a council appointee.

Because the elective system gives no assurance that the mayor elected under the strong mayor plan will have any professional or administrative competence, some such plans (Duluth and St. Cloud, for example) include charter provisions for a professional assistant to the executive under the mayor's control and supervision. Sample provisions of this kind are included in this appendix.

The strong mayor plan has the same merit as the council-manager plan in focusing administrative responsibility in a single executive and it appeals to those who believe that the chief executive of the city should be directly accountable to the people. Inherent in the system, however, is the possibility of executive-legislative conflict that may continue until it is resolved by the voters. Some recent charters have attempted to provide an alternate form in which the mayor is made president of the council and is given a stronger position of political leadership than under the traditional council-manager plan but management is placed in the hands of an administrator under the council, an administrator whose authority may be somewhat more circumscribed than the authority of a manager. See Appendix B for outlines of a model plan for such a mayor-council administrator form.

To provide a strong mayor plan, Chapter 6 on administration of city affairs will have to be rewritten. The initial section might then be begun as follows:

"Sec. 6.01. (assuming the charter commission does not want to put these provisions in a different chapter preceding the chapter on the council) Mayor's powers and duties. Subdivision 1. The

executive power shall be vested in the mayor.

Subject to the provisions of this charter and ordinances consistent therewith, he shall control and direct the administration of the city's affairs. Without limiting the generality of the foregoing, he shall have the powers and duties set forth in the following subdivisions:"

The other subdivisions can be taken (and renumbered) from Subdivision 2 and following subdivisions of the model charter, Section 6.02, with these exceptions:

Subdivisions 5 and 6 as renumbered would read:

"Subd. 4. He shall have the right to attend council meetings and may take part in the discussion, but he shall not vote.

"Subd. 4. He shall make recommendations to the council and deliver messages to the council and the people, including a comprehensive message on the state of the city as soon after the beginning of his term as practicable."

New subdivisions might then be added before the last subdivision to read:

"Subd. 8. He shall appoint and may remove such professional and clerical assistants as the council may provide for his office."

"Subd. 9. He shall approve or veto ordinances and resolutions as provided in this charter.

"Subd. 10. He shall appoint, with the advice and consent of the council, members of such

advisory boards and committees as are established by him or by the council. Such members shall be removable as provided in the instrument establishing the board or committee."

The NML model suggests as an adequate brief provision on a professional assistant to the mayor, instead of or integrated with subdivision 8 above, the following:

"There shall be a city administrator (administrative assistant, or other title) who shall be appointed by and may be removed by the mayor. He shall be the principal managerial aide to the mayor and shall perform such duties as may be assigned to him by the mayor."

A few charters attempt to spell out the responsibilities of the administrative assistant in more detail, though this practice seems questionable as tending to insulate the assistant from the control of the mayor, who is intended to be responsible for the proper conduct of the city's affairs. Furthermore, mayors differ in their administrative style and, as the responsible executive, each mayor ought to be able to use the assistant in the way which suits him best. The St. Cloud charter adds minimal provisions to the NML type of suggestion. Under the St. Cloud provision, the administrative assistant is to be appointed "upon the basis of his qualifications" and to "devote his full time and undivided attention exclusively to his duties as Administrative Assistant; he may hold a position as the head of one or more municipal departments; he shall be responsible for the faithful and lawful performance of his duties solely to the Mayor, who shall be responsible for the acts of his appointee."

The Duluth charter spells out the duties of the administrative assistant in greater detail while attempting to keep the mayor's executive responsibility undiluted. Pertinent provisions of the Duluth charter include the following with reference to the responsibilities of the administrative assistant:

"Section 19 . . . The Administrative Assistant shall be the Mayor's principal assistant. He shall be appointed solely on his ability to perform the duties and functions of his office, as set forth in this charter, and shall have had, during the ten

years immediately preceding his appointment, at least five years of successful experience as an executive or administrator such as would qualify him for the performance of these duties.

. . . The Administrative Assistant, under the supervision of the Mayor and subject to direction by the Mayor, shall supervise the heads of all departments, except the City Attorney; appoint, with the approval of the Mayor and the Council, and remove, with the approval of the Mayor, the heads of all departments; inform himself and keep the Mayor advised concerning the activities of all offices, departments and boards and make, or cause to be made, investigations and studies of the internal organization and procedure of any office or department, and may require such reports from any of them which he deems necessary; prescribe accepted standards of administrative practice to be followed by all offices and departments; prepare the annual operating and capital budgets, and supervise the execution of budget ordinances; make information available to the Mayor, the Council and the public concerning the current status of the financial affairs of the City and all offices, departments and boards receiving appropriations from the City; attend meetings of the Council at its request, and make available such information as it may require; perform all other duties required of him by this charter, or

by ordinance or assigned to him in writing by the Mayor.

"The Mayor, by prior written notice directed to the Administrative Assistant, may relieve the Administrative Assistant of any duties, powers or responsibilities granted the Administrative Assistant by the terms of this charter. Such written notice, signed by the Mayor, shall be filed with the City Clerk as a document of public record.

Sec. 21. At the head of each department there shall be an officer of the city, who shall have control and direction of the department subject to the general supervision of the Administrative Assistant. The head of each department shall, with the approval of the Administrative Assistant, have the power to appoint and remove all officers and employees of the department subject to the Civil Service provisions of this charter. Two or more departments may be headed by the same individual and the Administrative Assistant may head one or more departments, and heads of the departments may also serve as chiefs of divisions thereof as may be established by ordinance, upon recommendation by the Mayor. . .

The administrative assistant in Duluth, as is usual in such plans, is appointed by, and serves at the pleasure of, the mayor. He is, however, forbidden to take part in any municipal election campaign, and the council may remove him, on proof and after notice and hearing, for a violation of this prohibition.

The veto power included in conventional strong mayor charters and referred to in the suggested

subdivision 9 above can be incorporated in a rewritten Section 3.08 as follows:

"Sec. 3.08. Signing, filing, presentation to mayor, veto.

Subdivision 1. Presentation to mayor. Every ordinance or resolution passed by the council shall be presented to the mayor within five business days after its passage for his approval or rejection. Within five business days after presentation, the mayor shall either sign the measure or return it to the council with a communication in writing stating his disapproval and the reasons therefor. If he neither signs nor vetoes the measure within five business days, it shall be deemed approved.

Subd. 2. Item veto. Any ordinance or resolution shall be approved or vetoed by the mayor in its entirety, except that any item in a measure appropriating money may be approved or vetoed.

Subd. 3. Reconsideration and overriding veto. Any ordinance or resolution or part of an appropriation measure which has been vetoed may be reconsidered by the council and shall become law if passed by an affirmative vote of at least five members within 30 days of the veto. Any ordinance or resolution or any part of an appropriation measure which has been reconsidered by the council and repassed shall be deemed approved."

The provision for five votes to override the veto assumes a seven member council. The figure should probably be four if the council consists of five members, six if it consists of nine.

The material in the quoted section above may be split into several sections if preferred and following sections renumbered accordingly.

If the strong mayor plan is to be included, the charter commission must go through the model

carefully to adapt it throughout to the strong mayor concept. Section 2.03 should exclude the mayor from the council and provide an odd number of council members. Section 2.06 on the mayor should be omitted if a section like the quoted Section 6.01 in this appendix is included; instead of the sentence in Section 2.06 on the president pro tem, there should be included a provision for choosing both a president and a president pro tem from the council members. The mayor should be substituted for the manager at appropriate places throughout the charter.

## Appendix B

### Alternate Plan for City Administrator Under the Council

Some charter commissions, fearful that the council-manager plan vests too much authority in the manager but recognizing the need for direction of the city's administration by a single appointed executive under the council, have provided for such an officer in the charter or included a charter provision authorizing the council to appoint one. In either case duties are spelled out in much the same way as the duties of a manager. Principal exceptions are in (1) requiring approval by the council of appointments and removals made by the administrator (or even providing for council appointments and removals on recommendation of the administrator); (2) sometimes giving the administrator less control over preparing and administering the budget; (3) sometimes giving the council the duty of approving all purchases and contracts regardless of size; and (4) sometimes denying the administrator jurisdiction over certain departments.

When charter authority for an administrator (sometimes given a different title, like coordinator, executive assistant, administrative assistant) is merely permissive, the charter sometimes allows the council to set up the position by ordinance, sometimes requiring a popular vote first (which makes the step almost as difficult procedurally as using a charter amendment for the purpose). In some cases the charter does not spell out the duties but merely authorizes the council to do so

by an ordinance consistent with the charter. In some charters, abolition of the position, once established by the council, would require approval of the voters; in others, either there are no restrictions on the council's authority in this respect or the council must act by ordinance subject to usual charter referendum provisions.

The more the authority of the administrator is diluted from conventional manager-plan responsibilities, the less likely it will be that the plan achieves the objectives of providing central control and supervision with proper responsibility both in the administrator and the council.

In any city in which the council is responsible for the executive departments (as in former villages) and the mayor is given no executive authority, the council may itself, without specific charter provision, provide for an administrator with supervision and control of the administration--subject, of course, to the ultimate responsibility of the council. A number of statutory cities have established this plan either by enlarging on the responsibilities of the clerk or giving these duties to a separate administrator.

Any charter commission wishing to include provisions for an administrator in the charter may secure representative actual charter provisions from the League on request.



## Appendix C

### Alternate Plans for Electing Councilmen

The model charter provides for election of all members of the council at large. This is the system used by virtually all former villages and about a third of the home rule charter cities in Minnesota. Slightly more than a third elect all their councilmen by wards (districts) and the rest use a combination system.

The provisions of Minnesota charters and the arguments for and against the ward system may be found in a League memo, "The Ward System of Election of City Councilmen", available to charter commissions on request. The arguments will not be reviewed here. It may be said as a generalization, however, that the smaller the city, the stronger the arguments against the ward system.

Where a substantial number of councilmen is elected together, voters often complain about their inability to focus their opposition on particular candidates, or to give effective support to one candidate except by "bullet voting", i.e. casting a ballot for the favored candidate and not voting for anyone else. The practice of bullet voting, if followed extensively, may result in the election of several candidates with only a plurality of the votes, even where the field of candidates has been narrowed by a primary election. To avoid these and other problems, some charter commissions may wish to consider applying the so-called "alley" (or "place") system, now used for judges in Minnesota, to council races. A sample provision of this kind is included in this appendix along with a sample plan for election by wards and another for a combination system. The "alley system" can be applied also to the at-large candidates under the combination plan. The more at-large positions to be filled at the same election, the more dissatisfaction there is likely to be with the usual free-for-all type of contest where each candidate runs against the whole field.

#### Election by Separate Position ("Alley System" or "ABC Filing")

Sec. 4.04. (Sec. 4.04 of model to be renumbered 4.05 if this section is included.) Council positions.

No later than \_\_\_\_\_, 19\_\_\_\_, the city council shall designate each council seat, whether occupied

or not, by a separate letter of the alphabet and assign each incumbent to one of the seats. Each council seat so designated shall be a separate office for each subsequent city election. Any incumbent member of the council filing for re-election shall be a candidate only for that office of which he is the incumbent. Each person filing for the office of councilman shall state in his affidavit of candidacy which designated council seat he is a candidate for. Incumbency shall not be indicated on the ballot.

#### Election by Wards

##### Sec. 2.03. Council composition and election.

The council shall be composed of a mayor, who shall be elected at large, and six councilmen who shall be elected by wards. Each councilman shall be a resident of the ward from which he is elected and shall serve for a term of four years and until his successor is elected and qualifies, except that at the first election held after the adoption of this charter the three councilmen-elect from the even-numbered wards shall serve for four years and the other three councilmen-elect shall serve for two years. The mayor shall serve for a term of four years and until his successor is elected and qualifies.

Comment: A possible alternate to the

exception in the second sentence might read: "except that at the first election held after the adoption of this charter, the three councilmen-elect having the highest ratio of votes to the number of registered voters in their wards shall serve for four years and the other three councilmen-elect shall serve for two years." Of course, if the city already has a biennial election system, four-year overlapping terms, and a ward system with the same number of councilmen, the exception is unnecessary. If all councilmen are to be elected at the same election, the overlapping term provisions should, of course, be omitted.

Sec. \_\_\_\_ (Section can be inserted after sec. 2.03 or in chapter 4 of model) Wards.

Subdivision 1. General requirements. The council shall by ordinance adopted not later than \_\_\_\_\_, 19 \_\_, divide the city into wards. Wards shall be as equal in population as practicable and each ward shall be composed of compact, contiguous territory. Each councilman shall be a resident of the ward from which he is elected, but a change in ward boundaries does not disqualify a councilman from serving for the remainder of his term.

Subd. 2. Redefining ward boundaries. The council by ordinance may redefine ward boundaries after any regular municipal election. Within six months after the official certification of each federal decennial or special census, the council shall either confirm the existing ward boundaries as conforming to the standards of subdivision 1 or redefine ward boundaries to conform to those standards. Any ordinance establishing new ward boundaries shall apply to the first election held at least six months after

adoption of the ordinance. If the council fails to take either action within the time required, no further compensation shall be paid to the mayor or councilmen until the wards of the city are redefined as required by this charter. No division or redivision of the city into wards shall be made until the council has held a public hearing on the proposed ordinance after one week's published notice.

Sec. 4.03. Filing for office. (There should be added to this section or at some other place the following sentence.) In addition to the candidates for offices to be filled by election at large, only the names of the candidates for councilman in one ward shall appear on the ballots for that ward.

Sec. 2.04. Vacancies. (The phrase "ceases to reside in the city" should have added to it some such phrase as "or, in the case of a councilman, the ward from which he was chosen." To avoid awkwardness, the sentence might then be broken by semicolons or numbers separating the various clauses.)

Comment: If there is no need for as many wards as there are councilmen, it may be more desirable to provide some at-large councilmen rather than provide for two or three councilmen from each ward. If the charter commission does decide to have two councilmen from a ward, overlapping terms within the ward should be provided under a four-year term system.

Some charters provide other methods to assure that redistricting is done as required. Even without any charter method of enforce-

ment, mandamus action can be brought to compel compliance with charter requirements.

Original ward boundaries may be included in the charter if the charter commission prefers; however, unless there is clear agreement on the matter, putting the original wards in the charter may be a source of substantial controversy in the charter campaign. If the city already has appropriate ward boundaries, they may be continued initially by a simple provision.

It is common practice to refer to ward councilmen as aldermen. The term can be substituted throughout the charter if the charter commission prefers.

### Combination Ward-At-Large System

#### Sec. 2.03. Council composition and election.

The council shall be composed of a mayor and six councilmen. The mayor and two councilmen shall be elected at large, and four councilmen shall be elected by wards. Each ward councilman shall be a resident of the ward from which he is elected and shall serve for a term of four years and until his successor is elected and qualifies, except as provided in this section. At the first election held after the adoption of this charter, the two councilmen-elect from the even-numbered wards shall serve for four years and the other two ward councilmen-elect shall serve for two years; and of the two councilmen elected at large, the one receiving the highest vote shall serve for four years and the other successful candidate shall serve for two years. The mayor shall serve for a term of four years and until his successor is elected and qualifies.

Comment: A city interested in the alley

system may incorporate those provisions into this section for the at-large members if all are to be elected at once. The system may not have much appeal, even to its advocates, where only two are to be elected at any election.

The comment on Section 2.03 of the ward system alternative is also pertinent here.

Sec. ----- Wards. Substantially the same as in the ward system alternative. References to "councilman" or "alderman" should read "ward councilman" or "ward alderman" in appropriate places.

Sec. 4.03. Filing for office. Substantially the same as in the ward system alternative.

Sec. 2.05. Vacancies. Same as in the ward system alternative, except the substitution of "ward councilman" or "ward alderman" for "councilman."

### Ward Filings with At-Large Election

A few cities in the country, including St. Cloud and possibly others in Minnesota, attempt to give ward representation with city-wide responsibility by allowing voters throughout the city to determine who shall be the ward councilman from each ward. Any voter may file for ward councilman but he competes only against other candidates living in his ward and the person among such candidates with the highest vote is elected even though his total vote might be smaller than an unsuccessful candidate in another ward.

There is some doubt about the constitutionality of this system in Minnesota. An 1891 special law adopting this plan for St. Paul was held unconstitutional as a violation of Article 7, Section 7 of the Minnesota Constitution. *State ex rel Childs v Holman*, 58 Minn. 219, 59 N.W. 1006 (1894). That section makes any voter "eligible to any office which now is, or hereafter, shall be elective by the people in the district wherein he shall have resided 30 days previous to such election, except as otherwise provided in this Constitution." The Court with one of the five judges dissenting, said that the special law added to the constitutional qualifications and this the legislature had no right to do. The case has been weakened as authority, however, because the local government amendment adopted in 1958 as Article XI of the constitution specifically states, "The legislature may provide by law for . . . local government units and their functions . . . for their officers, including qualifications for office, both elective and appoint-

ive", a fairly clear implication that the legislature may now add to the qualifications for local elective offices. It is at least arguable that a home rule charter, when not prohibited by law, may do whatever the legislature might have done with reference to municipal government, including its officers.

A variant of this plan is used in several local governments throughout the country, including Oakland, Cal. and Dade County, Florida. Under this scheme, the primary election is by districts but everyone votes at large on the district candidates in the general election and each district's top vote-getter is elected.

The St. Cloud plan can be included in the model charter by inserting substantially the following provisions.

**Sec. 2.03. Council composition and election.**

The council shall be composed of a mayor, who shall be elected at large, and six councilmen. There shall be one councilman from each of the six wards who shall be chosen by all the voters of the city from candidates who reside in his ward. Each councilman shall serve for a term

of four years and until his successor is elected and qualifies, except that at the first election held after the adoption of this charter, the three councilmen-elect from the even-numbered wards shall serve for four years and the other three councilmen-elect shall serve for two years. The mayor shall serve for a term of four years and until his successor is elected and qualifies.

Comment: The comment on Section 2.03 of the ward system alternative is also pertinent here.

Sec. \_\_\_\_ Wards. (Same as in the ward system alternative, p. 31.)

Sec. 2.05. Vacancies. (Same as in model that the phrase, "ceases to reside in th city" have added to it some such phrase as "or, in the case of a councilman, the ward for which he was chosen." To avoid awkwardness, the sentence might then be broken by semicolons or numbers separating the various clauses.)

The St. Cloud charter has a partial at-large system. Of the seven councilmen, four are "resident members" and three are members at large. The resident members must meet ward residence qualifications.

## Appendix D

### Selected League Memos of Interest to Charter Commissions

As part of its Information Service, the League of Minnesota Cities has available to municipal officials, including charter commission members, numerous memos and reports on a wide variety of municipal topics. Among those dealing with problems of interest to charter commissions are the following, listed by title and file number:

- 100a.1 Advantages and Disadvantages of a Home Rule Charter
- 100a.3 Minnesota Home Rule Charters Adopted Since 1920
- 100a.7 Principles and Problems of Charter Making
- 100a.8 Sources of Assistance to Charter Commissions
- 100c.1 Home Rule Charter Commission Procedure
- 130b1.3 Competitive Bidding Requirements - Notes
- 130d.1 Official Interest in Contracts
- 140a.1 Council Composition and Method of Election in Minnesota Cities
- 140a.2 The Ward System of Election of City Councilmen
- 180a.3 November City Elections - Odd or

#### Even Years?

- 180h.1 Charter Provisions for Primary Elections
- 215d2.1 Debt Limits in Minnesota Cities
- 335b.1 Adoption of Codes by Reference
- 335c.1 Codification of Municipal Ordinances
- 369.3 The City Administrator
- 390e.1 Charter and Election Data on Minnesota Municipalities
- 390e.5 Form of Government of Home Rule Charter Cities in Minnesota
- 390e.8 Pros and Cons of Council-Manager Plan
- 415h1.1 Civil Service Systems and Merit Systems in Minnesota Municipalities
- 415h2.1 Merit System - Notes and Ordinances
- 415i.2 Some Statutory and Charter Provisions on the Removal of Elective Officers in Minnesota Units of Local Government
- 470a.1 Purchase and Sale of Real Property by Municipalities
- 515a1.3 Local Improvement Guide

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